TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 738

THE UNITED STATES OF AMERICA, PETITIONER

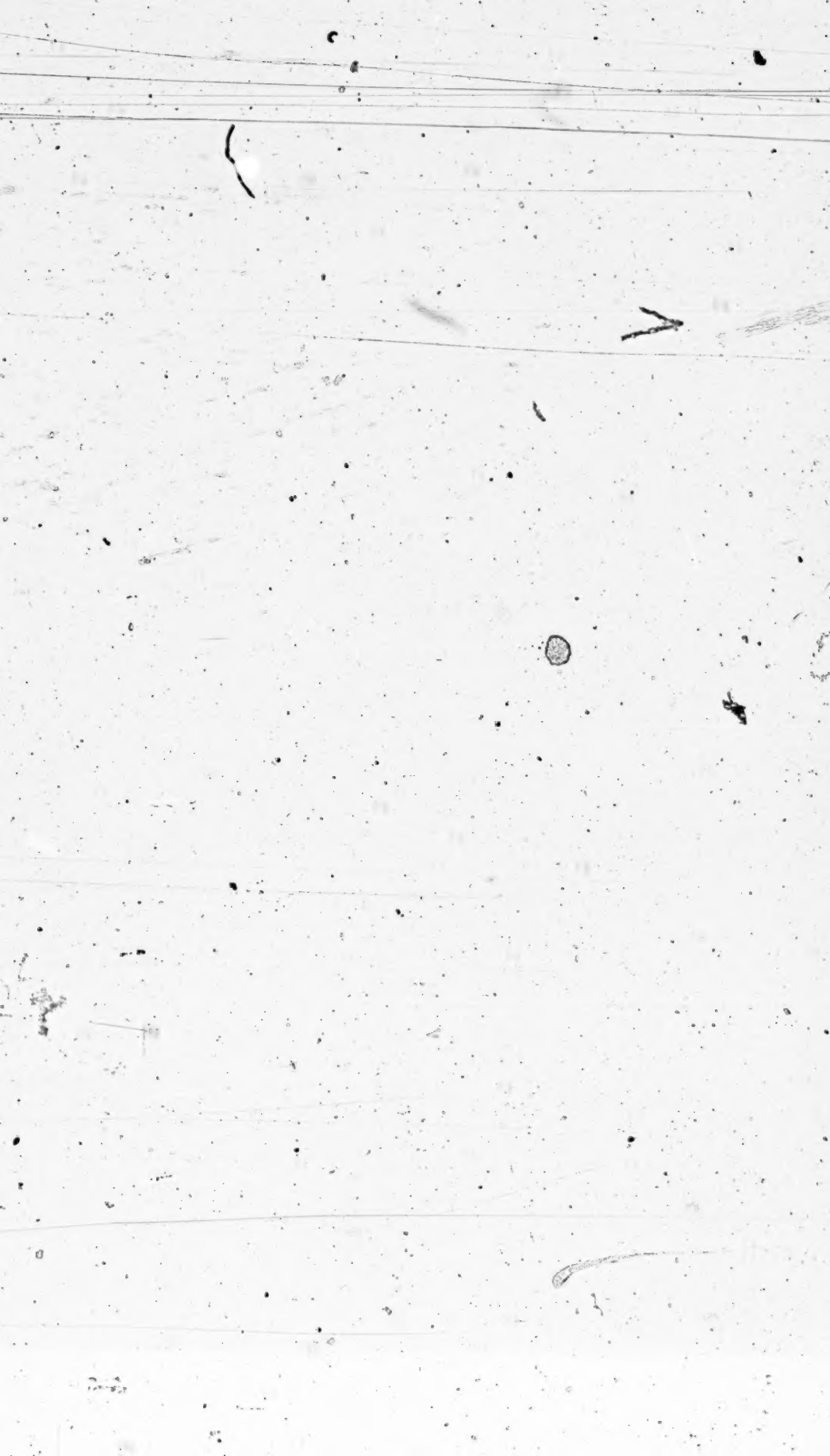
Citizens Loan & Trust Co. Adm'r de bonis non

vs.

~~ELIZABETH KERR, ADMINISTRATRIX~~ OF THE ESTATE OF JOSEPH KELLY KERR, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED NOVEMBER 10, 1941
CERTIORARI GRANTED DECEMBER 15, 1941



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A [Caption omitted.]

1 In District Court of the United States for the District of Columbia

Law No. 70830

ELIZABETH KERR, AS ADMINISTRATRIX OF THE ESTATE OF JOSEPH KELLY KERR, DECEASED, PLAINTIFF,

v.

THE UNITED STATES OF AMERICA, DEFENDANT

Agreed statement of case on appeal

Filed March 4, 1941

Believing the questions presented upon this appeal can be determined without an examination of all the pleadings, evidence and proceedings below, the parties hereto respectfully submit this agreed statement of the case as setting forth so many of the facts as are essential to a decision of the questions by this Honorable Court, to wit:

The questions involved on the appeal arise in connection with proceedings below pursuant to the decision of this Court on December 4, 1939, of a prior appeal designated as No. 7391, Kerr v. United States in this Court, and the remand of the case for further consistent proceedings.

It is agreed this Court, in its decision reversing the judgment of the lower Court to the contrary, held the defendant United States liable on November 8, 1919, the date of death of insured, for the proceeds of a certain yearly renewable term insurance policy contract in the principal amount of $10,000 upon the life of Joseph Kelly Kerr, although the grace month premium for November 1919, remained unpaid at his death.

2 It is agreed that Eugene Kerr, father of insured and designated beneficiary of the policy contract, survived insured and died subsequently on June 24, 1924, before receiving any part of its proceeds by any award thereof or otherwise. By intervening petition filed below on April 4, 1940, Elizabeth Kerr, Admx. of the Estate of Eugene Kerr, deceased beneficiary, was made a party plaintiff.

It is agreed the proceedings pertinent to the questions involved on this appeal are as follows:

[Captions omitted.]

Judgment pursuant to mandate

Rendered April 4, entered April 5, 1940

The plaintiff, Elizabeth Kerr, Administratrix of the Estate of Joseph Kelly Kerr, deceased, having appealed to the United States Circuit Court of Appeals for the District of Columbia from the judgment of this Court entered herein on March 27, 1939, and after hearing thereof, said Court of Appeals having issued its mandate, duly filed herein, with direction that said judgment of this Court be reversed, and for further necessary proceedings, and it appearing Elizabeth Kerr, Administratrix of the Estate of Eugene Kerr, deceased, is an additional party plaintiff herein entitled to recover by and for cause shown in her amended complaint duly filed by leave of Court, and the Court having heretofore made and filed its findings of fact herein, and the Court being advised, it is this 4th day of April 1940:

Ordered that the judgment of the United States Circuit Court of Appeals for the District of Columbia as set forth in its mandate heretofore filed in this Court on December 22, 1939, be and the same is made the judgment of this Court, and that the judgment of this Court entered herein on March 27, 1939, be and same is reversed, and it is further

3 Ordered, adjudged and decreed, That the plaintiff, Elizabeth Kerr, Administratrix of the Estate of Eugene Kerr, deceased do have and recover from the defendant, The United States of America, the sum of $3,220, representing monthly installments of insurance that have accrued on or since November 8, 1919, to and inclusive of June 8, 1924, in the month of the death of Eugene Kerr, and that Elizabeth Kerr, Administratrix of the Estate of Joseph Kelly Kerr, deceased, do have and recover from the defendant The United States of America, the sum of $10,580, representing monthly installments of insurance that have accrued on or since July 8, 1924, to and inclusive of October 8, 1939, making the aggregate amount of this judgment to be $13,800, and it is

Further ordered and adjudged that 10% of each of said recoveries, to wit, a total of $1,380.00 be payable to and paid to Camden R. McAtee, attorney of record for said plaintiffs as the

attorney fees allowable by law for services herein to said plaintiffs, and in reduction of the amounts payable to said plaintiffs.

(S) F. DICKINSON LETTS, *Justice.*

Approved as to form.

(S) ALLEN CRENSHAW,
Atty. Dept. of Jus.

4 *Motion for Correction and Substitution of Judgment in Favor of Plaintiff*

Filed June 21, 1940

Comes the defendant, the United States of America, by the United States Attorney in and for the District of Columbia, and moves the Court that the judgment in favor of the plaintiffs heretofore entered by this Court on April 4, 1940, be corrected, amended, changed, and altered to provide only for the payment of installments of insurance at the rate of $57.50 each per month, beginning on November 8, 1919, date of death of the insured, Joseph Kelly Kerr, to and including June 8, 1924, the monthly installment due and payable immediately prior to date of death of Eugene Kerr, the designated beneficiary on June 24, 1924, such installments payable to the administratrix of the estate of said Eugene Kerr, and that the remaining unpaid monthly installments of such insurance accruing after June 8, 1924, be recovered and payable to the administratrix of the estate of said Joseph Kelly Kerr, deceased insured, in the commuted value of such unpaid monthly installments as of the date of July 8, 1924, in the sum of $8,234, instead of the recovery as provided in the judgment heretofore entered of the monthly installments of $57.50 each beginning from and after July 8, 1924, and inclusive of October 8, 1939, in the total number of 184 installments, and assigns as grounds for such motion, as follows:

I

The judgment heretofore entered on April 4, 1940, in providing for the payment of monthly installments following the death of the designated beneficiary on June 24, 1924, to and including October 8, 1939, in the total sum of $10,580 is incorrect, unauthorized by law and is an illegal charge against this defendant under
5 the provisions of Section 303 of the World War Veterans Act as amended March 4, 1925, which provides for the payment of such insurance benefits after the death of the designated bene-

ficiary to the estate of the deceased insured, the then present value of the remaining unpaid monthly installments, which here amount to the sum of $8,234, less $6.50 premium due on the insurance for the month of November 1919, payable November 1, 1919, prior to the death of the insured on November 8, 1919, instead of the amount, provided for in the judgment entered, of monthly installments, totalling 184, or a total sum of $10,580.

II

The judgment heretofore entered on April 4, 1940, erroneously provided for the recovery of these installments rather than the commuted value thereof because of the inadvertence and mistake of this attorney representing the defendant in failing at the time of the entering of the judgment to recall this very plain provision of law and applying the same to the judgment being entered and for which he offers his humble apologies.

Respectfully submitted,

(S) ALLEN CRENSHAW,
Attorney, Department of Justice.

6 *Stipulation and Affidavits Relating to Motion*

Filed January 9, 1941, nunc pro tunc as of June 21, 1940

Stipulation

[Signatures omitted.]

The parties herein stipulate the Court may find the following as matters of fact herein:

1. After death of Eugene Kerr, beneficiary, on June 24, 1924, that 184 installments of $57.50 were thereafter payable under the insurance contract herein monthly therein from July 1924, through October 1939, both inclusive.

2. That the commuted present value of said 184 monthly installments thereafter payable, calculated with interest at 3½%, as of July 8, 1924, and thereby as of June 24, 1924, was and is $8,234.00.

3. That the present value of said 184 installments on October 8, 1939, and thereafter was and is $10,580.00.

7 *Affidavit of Allen Crenshaw*

[Jurat omitted.]

I, the undersigned, Allen Crenshaw, formerly an attorney in the Department of Justice, hereby certify to the facts known to me in connection with the entering of judgment for plaintiff by the United States District Court in and for the District of Columbia in the suit of Elizabeth Kerr, Administratrix of the Estate of

Joseph Kelly Kerr, deceased, and Elizabeth Kerr, Administratrix of the Estate of Eugene Kerr, deceased beneficiary v. United States of America on the 4th day of April 1940, as follows:

For some two years I personally handled this case in its preparation for trial, in its presentation to the Court, in the preliminary discussions before entering of the judgment and in approving such judgment. At all times, even years before I had any connection with this case, I was fully aware and recognized the practice, procedure, and interpretation of the law by the Veterans Administration and by the Bureau of War Risk Litigation, in which interpretation I concurred, which limited the payment of installments of insurance benefits following the death of the insured and the death of the designated beneficiary to the commuted value of such installments, calculated as of the date of death of the designated beneficiary, rather than the full installments as they may have otherwise matured. This was regardless of the date of any judgment or award of recovery of such insurance. As a matter of fact, I had previously prepared judgments for plaintiffs in a very large number of cases in which recovery on a basis of the commuted value rather than the full installment had been provided for. In a great many, if not a vast majority of the cases, it had been the practice of my office to prepare judgments for plaintiffs since I found this method would best concentrate my thought upon the terms of the judgment to be entered and avoid errors therein. The fact that the judgment as entered
8 herein provided for the recovery of the full installments instead of the commuted value thereof calculated as of the date of the death of the designated beneficiary was occasioned solely because it escaped my notice. This error in failing to call this to the Court's attention and to object to the inclusion of that provision in the judgment as entered was clearly, definitely, and certainly an error on my part, occasioned by an oversight which, under the circumstances I think is understandable and excusable. The circumstances are as follows:

The attitude of the attorney for the plaintiff during the whole course of the progress of this trial was one of suspicion, antagonism, and insistence upon an infinite detail, that frequently resulted in the most heated discussions and arguments until long before the question of entering this judgment arose, I had accumulated an exaggerated desire to avoid any conflicting opinions with him. In other words, I sought on every occasion, when it became necessary to consider any feature of the case, to waive insignificant or immaterial or petty detail that I might avoid the tedium and unpleasant arguments I anticipated.

After the decision of the Court of Appeals, requiring apparently a judgment for plaintiff, the plaintiff's attorney came to my office

and we had a general discussion on the subject of the proposed judgment. Following my usual custom, I suggested without undue insistence, that my office would prepare the judgment and submit to him. He seemed to object to this and insisted that he would prepare his own judgment as was his right and privilege. At that time no details of the provisions of such a judgment entered into the discussion. If any mention was made, which may be possible, of the size of the judgment or the attorney's fee involved, it was general in nature and done with the common use of generalities rather than specific terms under such conditions. Some time later, this attorney presented to me at my office the proposed judgment which he had prepared. Upon hastily reading the same, I
9 discovered the more obvious errors that it provided for the recovery of interest and attorney's fees in addition to the principal sums of the judgment. This provision in his proposed judgment indicates the certainty that we had not previously discussed the specific terms of the judgment. I immediately called these errors to his attention but he did not concede them until we had had a lengthy argument and discussion of the Courts' decisions, which were examined over a period of several hours. The exhaustive character of this discussion undoubtedly diverted my attention from other details of the judgment and caused me to overlook the less obvious error involved in the recovery of full installments rather than the commuted value thereof. In addition, the question of the death of the beneficiary and the joining of the administrator of that estate, which was the determining factor as to the method and amount of the payment of installments accruing after that death was not a part of the suit herein until the time had arrived for entering the judgment, when plaintiff's attorney filed the necessary petition to join such administrator. Up to that point, and due to the circumstances above narrated, I perhaps had hazily figured that the payment would involve the full amount of installments without taking into consideration the effect of the death of the beneficiary which entered into the case at such a late hour. I am sure that had I drawn and prepared the judgment or had I taken any notice of the situation created by the death of the beneficiary, that I would not have approved the judgment containing provisions for the recovery of full installments, but would have insisted upon eliminating that and substituting recovery of the commuted value as of the date of the death of such beneficiary.

I can account for my oversight and the error in not objecting to this provision prior to the entering of this judgment in no other way. That the error was occasioned by my oversight as stated above, is definite and certain in my own mind. After the experi-

ence of a number of years in which I had occasion to prepare and approve many hundreds of judgments, I do not recall another instance in which I made such a mistake as this. I also definitely state that of the many judgments entered and frequently prepared by me for plaintiffs' attorneys, all of which provided for recovery of the commuted rather than full installments in such similar instances as here, that no other attorney has ever questioned or objected to that well recognized practice, procedure, and interpretation of the law.

(S) ALLEN CRENSHAW.

10 *Counter-Affidavit of Camden R. McAtee*

Filed January 9, 1941 (n. p. t. supra.)

[Jurat omitted.]

Camden R. McAtee, being duly sworn, states:

For counter-affidavit to that of Hon. Allen Crenshaw herein, and with deference to and for correction of the frailties of memories therein revealed:

That affiant did informally submit and discuss at intervals drafts of judgments herein relative to the recovery by the estate of the insured as follows (in substance from copies in his files):

(a) For recovery of $10,599.17; being the installments of $57.50 payable for the interval months between June 24, 1924 and November 8, 1939, subject to 10% attorney allowance.

(b) For recovery of $57.50 for the interval months from June 8, 1924 to November 8, 1939, subject to 10% attorney allowance.

That no judgment submitted provided for recovery of any interest upon the installments, and each provided for recovery in full and without commutation, of installments payable after death of the beneficiary in June 1924.

That Col. Crenshaw suggested the installment for June 1924 was allocable to the beneficiary recovery as presumably payable on the anniversary date of insured's death, and the awarded recovery to the estate of the insured in the judgment entered April 5, 1940, was stated in the amount of $10,580, and to the beneficiary estate in the amount of $3,220, each subject to 10% attorney allowance.

That in said discussions the unusual facts herein that the 240 installments had all accrued in October 1939 under the insurance contract, were all unpaid, and being judicially awarded, were fully known and recognized as well as the statutory provision that
11 the installments payable after death of the beneficiary to the estate of insured were subject to commutation as of the date of last payment under any existing award, whereby, as the result

of the judicial award made by a judgment award to the beneficiary estate after October 1939, the installments thereafter payable to the estate of insured would not be commutable because previously entirely accrued and that the award of judgment to the estate of insured was consequently the total of said installments payable after death of the beneficiary as so entirely accrued before and at the time of the award of judgment to the beneficiary estate.

That, prior to entry of said judgment awards, affiant was not informed by Col. Crenshaw, or otherwise of the new alleged practice, procedure, and interpretation of the law by the Veterans' Administration and Bureau of War Risk Litigation as limiting installment payment after deaths of insured and surviving beneficiary to the commuted value thereof as of the date of death of the beneficiary regardless of the date of any judgment or award of recovery, and denies either the existence or validity thereof. For cause in support of said denial, affiant says administrative application of the statutory provision is to the contrary (V. A. Cody ruling; 5 C. G. 501). That, after statutory disagreement and institution of action thereon that the determination of the rights of the beneficiary estate and estate of insured to the proceeds and award thereof for recovery is judicial, not administrative, and the judgment of award for recovery by the beneficiary estate is determinative of the nature of the judgment of award for recovery by the estate of insured, and under the facts of this case, after a judgment award to the beneficiary estate of all installments thereto payable, the statute justifies and requires judgment award to the estate of insured in full and without commutation, of all remaining installments accruable and accrued previous to either judgment award under the insurance contract.

Affiant further states, after entry, the judgment recoveries herein were reviewed and certified as correct to the Bureau of War
12 Risk Litigation, and there reviewed and certified again as correct to the Veterans' Administration for payment.

Affiant disclaims any intention to harass or annoy Col. Crenshaw as stated by him herein and always endeavored to match his unfailing courtesy and to relieve him of detail in preparation of the case because of the evident press of other work upon him, and regrets the Department of Justice is without his earnest, capable, and deserving services.

Affiant, by reason of the premises, denies mistake, surprise, inadvertence or excusable neglect, justifying correction of the judgment award herein to the estate of insured, has been shown.

(S) CAMDEN R. MCATEE.

13 *Plaintiffs' motion for award of interest*

Filed December 27, 1940

Come plaintiffs Elizabeth Kerr, Administratrix of the Estate of Eugene Kerr, deceased, judgment-creditor herein in the amount of $3,220, and Elizabeth Kerr, Administratrix of the Estate of Joseph Kelly Kerr, deceased, judgment-creditor herein in the amount of $10,580, under judgment entered on April 4, 1940, and thereafter in full force and effect, by their attorney, and moves the Court:

To enter its order or orders awarding said plaintiffs interest at the rate of 6% per annum from June 21, 1940, until paid upon the principal sums of said recoveries less any sums hereinafter finally determined to be proper set-off, reduction of recovery, or other offset to said judgment-recoveries in favor of the United States.

For cause: (a) That by motions for correction and stay filed on June —, 1940, and thereafter, the defendant, United States, has withheld and is withholding the entire judgment recoveries pending determination herein of alleged minor set-off and correction of one of said judgment recoveries.

(b) In such case plaintiffs are entitled to said interest upon the amounts withheld for the time withheld to the extent same are finally payable.

(s) CAMDEN R. MCATEE.
Attorney for Plaintiffs.

* * * * *

Points and authorities

Act of March 3, 1933, c. 212, Title II, 47 St. 1516.

14 *Reference to Veteran Commissioner*

November 18, 1940

Honorable William R. Harr,
1644 Department of Justice Building,
Washington, D. C.

MY DEAR COMMISSIONER: I present for your consideration defendant's motion to correct judgment in Kerr vs. United States, law number 70830.

At the oral argument counsel for plaintiff requested that findings of fact accompany the ruling. I have endeavored to obtain

an agreement of counsel as to the essential facts but this without avail. With the papers which I enclose I include the suggested findings and the briefs which supplement the oral hearing.

Will you be good enough to assist me in my consideration of this motion, giving it your usual careful attention? It may be needless to say that much earnestness is evinced by both sides.

Will you also indicate what findings, if any, are necessary and appropriate to my ruling?

Sincerely yours,

F. DICKINSON LETTS.

FDL:GH.
Encl.

15 *Report of Veteran Commissioner*

Filed December 31, 1940

REPORT OF COMMISSIONER UPON DEFENDANT'S MOTION FOR CORRECTION OF JUDGMENT

On April 4, 1940, this court rendered judgment in this case pursuant to the mandate of the Court of Appeals reversing the judgment rendered by this court March 27, 1939. By said judgment (entered April 5, 1940) it was

Ordered, adjudged, and decreed, That the plaintiff, Elizabeth Kerr, Administratrix of the Estate of Eugene Kerr, deceased do have and recover from the defendant, The United States of America, the sum of $3,220, representing monthly installments of insurance that have accrued on or since November 8, 1919, to and inclusive of June 8, 1924, in the month of the death of Eugene Kerr, and that Elizabeth Kerr, Administratrix of the Estate of Joseph Kelly Kerr, deceased, do have and recover from the defendant The United States of America, the sum of $10,580, representing monthly installments of insurance that have accrued on or since July 8, 1924, to and inclusive of October 8, 1939, making the aggregate amount of this judgment to be $13,800, and it is

Further ordered and adjudged that 10% of each of said recoveries, to wit, a total of $1,380.00 be payable to and paid to Camden R. McAtee, attorney of record for said plaintiffs as the attorney fees allowable by law for services herein to said plaintiffs, and in reduction of the amounts payable to said plaintiffs.

On June 21, 1940, the Government filed a motion for the correction of this judgment in certain particulars.

Said motion does not question the correctness of the sum of $3,220 awarded to plaintiff as administratrix of the estate of Eugene Kerr, the designated beneficiary of the war risk insurance involved, who died June 24, 1924.

16 Said motion alleges, however, that the judgment rendered April 4, 1940, is erroneous and contrary to law in respect to the $10,580 awarded Elizabeth Kerr as administratrix of the estate of the insured, which amount represents the aggregate of the 184 monthly installments of $57.50 each remaining unpaid at the death of Eugene Kerr, the beneficiary of the insurance, on June 24, 1924.

The government contends that the amount due Elizabeth Kerr as administratrix of the estate of the insured should have been calculated on the basis of the present value of the 184 installments on the death of the beneficiary on June 24, 1924, in view of the provisions of Section 303 of the World War Veterans' Act, 1924, as amended March 4, 1925 (38 U. S. C. Sec. 514). So calculated, the Government says, the amount due the estate of the insured would be $8,234, less $6.50 the amount of the unpaid premium due on the insurance for November 1919.

Counsel for the administratrices, while objecting to any change being made in the judgment, apparently admits that $8,234 correctly represents the present value of the 184 monthly installments on the death of the beneficiary on June 24, 1924. (Plaintiffs' orig. memo. on motion, pp. 5-6.) Said counsel also admits that there should be deducted from the amount awarded the estate of the insured the sum of $6.50, the unpaid premium for November 1919. (Id.)

It is also apparent that if the judgment for the administratrix of the estate of the insured is to be reduced in either or both of the respects mentioned, the 10% of the amount recovered allowed plaintiffs' attorney should be corrected accordingly.

Counsel for plaintiffs objects to the correction of the judgment rendered April 4, 1940, on substantially the following grounds:

1. That the court has no authority in law or under the Federal Rules of Civil Procedure to correct the judgment.

2. That the judgment for the administratrix of the estate of the insured is correct, and does not come within the provisions of Section 303 of the World War Veterans' Act, 1924, as amended March 4, 1925, because no benefits under the insurance con-

17 tract had been awarded or paid prior to the judgment rendered April 4, 1940, and all of the monthly installments payable under said contract had accrued prior to said judgment. "Consequently", plaintiffs' reply brief (p. 3) states, "the last payment, in fact the only payment to the beneficiary herein, is the judgment of April 4, 1940, and the present value of the monthly installments thereafter payable, and accrued in the interval but always unpaid, is their full value awarded on April 4, 1940, to the estate of the insured."

STATUTE INVOLVED

"SEC 303. If no person within the permitted class be designated by the Act approved March 4, 1925, provides as to yearly renewable term insurance (43 Stat. 1310, c. 553, Sec. 14; 38 U. S. C. Sec. 514):

SEC. 303. If no person within the permitted class be designated as beneficiary for yearly renewable term insurance by the insured either in his lifetime or by his last will and testament or if the designated beneficiary does not survive the insured or survives the insured and dies prior to receiving all of the two hundred and forty installments or all such as are payable and applicable, there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable, said value to be computed as of date of the last payment made under any existing award: *Provided*, That all awards of yearly renewable term insurance which are in course of payment on the date of the approval of this Act shall continue until the death of the person receiving such payments, or until he forfeits same under the provisions of this Act. When any person to whom such insurance is now awarded dies or forfeits his rights to such insurance then there shall be paid to the estate of the insured the present value of the remaining unpaid monthly installments of the insurance so awarded to such person: *Provided further*, That no award of yearly renewable term insurance which has been made to the estate of a last surviving beneficiary shall be affected by this amendment: * * * This section shall be deemed to be in effect as of October 6, 1917."

The Act of March 4, 1925, also amended Section 301 of the World War Veterans' Act, 1924, by incorporating therein the following provisions dealing with converted insurance (43 Stat. 1309, c. 553, Sec. 13; 38 U. S. C. Sec. 512):

"If no beneficiary within the permitted class be designated by the insured as beneficiary for converted insurance granted under the provisions of Article IV of the War Risk Insurance Act, or Title III of this Act, either in his lifetime or by his last will and testament, or if the designated beneficiary does not survive the insured, then there shall be paid to the estate of the insured the present value of the remaining unpaid monthly installments; or if the designated beneficiary survives the insured and dies before receiving all of the installments of converted insurance payable and applicable, then there shall be paid to the estate of such beneficiary the present value of the remaining unpaid monthly installments: * * *"

Said amended Section 301, in the next paragraph, authorizes optional settlements, in contracts of converted insurance, whereby

the insurance may be paid to the insured in one sum or in installments of thirty-six months or more, and to the beneficiary in installments of thirty-six months or more. Said paragraph concludes with the statement, "This section shall be deemed to be in effect as of June 7, 1924."

COMMISSIONER'S OPINION

In my opinion, defendant's motion to correct the judgment rendered April 4, 1940, should be granted.

I

AUTHORITY OF THE COURT TO CORRECT THE JUDGMENT

Rule 6 (c) of the Federal Rules provides that the expiration of a term of court shall not affect its power "to do any act or take any proceeding in any civil action which has been pending before it."

19 Rule 60 (a) provides that the court may at any time, of its own initiative or on motion, correct clerical mistakes in its judgments, orders, or other parts of the record.

Subdivision (b) of said Rule 60 provides:

"(b) Mistake; Inadvertence; Surprise; Excusable Neglect.—On motion the Court, upon such terms as are just, may relieve a party or his legal representative from a judgment, order, or proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect. The motion shall be made within a reasonable time, but in no case exceeding six months after such judgment, order, or proceeding was taken. * * *"

Certain statements as to the scope of Rule 60 (b) made by former Attorney General Mitchell during the proceedings of the Institute of the American Bar Association on the new Rules, at Cleveland, Ohio, in July 1938, are pertinent here.

On page 324 of the volume containing said Rules and Proceedings, published by said Association, Mr. Mitchell is reported to have said:

"Rule 60. Relief from Judgment or Order. The first subdivision covers the case of clerical mistakes. Clerical mistakes may be corrected by the court at any time on its own initiative or on motion.

"Subdivision (b) is a provision for opening judgments, and that is a provision that may be used after a judgment has been entered by default or in fact after a judgment has been entered on any ground. Upon motion the court upon such terms as are just may relieve a party or his legal representative from a judgment, order, or proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect. Those are the terms and the lan-

guage of several statutes. As I recall, this particular language was taken directly from California."

Again, on page 329 of said volume, Mr. Mitchell said:

"I have here another question that I have just seen, from W. O. Wilson of Cheyenne, Wyoming: 'Referring to rule concern-
20 ing relief from judgments, many courts hold that courts have inherent power to correct their judgment at any time if such judgments do not speak the truth. Does this principle sustained by the United States Supreme Court still hold?'

"I should suppose it did. I think that the provisions that we have referred to in the rule itself (Rule 60 (b)) incorporate that. If they do not, you will notice that by the very exceptions we stated we tried to make it clear that we were not taking away any rights as to the correction of judgment."

And on page 380, Mr. Mitchell stated:

"Mr. Wales, of Chicago, asks: 'Does a District court ever lose the power to modify or vacate its own judgments upon grounds other than those stated in Rule 60? What is the effect of Rule 6 (c) in this connection?'

"Rule 6 (c) is the rule that says the expiration of the term does not affect the power of the court to deal with actions that are pending before it or have been pending. That is the only change that is made in the law. Of course a court loses power to vacate or modify its judgment except as provided in the rules and the statutes, when the judgment becomes final. * * *"

Since defendant's motion to correct the judgment was made within the six months allowed by Rule 60 (b), I think it should be granted, if said judgment does not comply with the legislation of Congress in the particulars sought to be remedied.

The fact that the judgment rendered April 4, 1940, was by consent of counsel, indicates that the attention of the court was not directed to any possible error therein.

It is to be noted that Rule 60 (b) covers judgments entered by mistake and inadvertence of the party against whom the judgment is rendered, or his representative, and is not confined to matters of surprise or excusable neglect.

Nor is the Government in the same position as a private person would be under similar circumstances. While the Government has consented to be sued in this class of cases, the court, in
21 rendering judgment, must comply with the legislation of Congress prescribing how amounts due under the insurance contract shall be paid, if such legislation be valid.

In a letter date December 19, 1940 (filed herewith) plaintiffs' counsel requests that Hines v. United States ex rel Marsh, 70 App. D. C. 206; 106 Fed. 2d 84, be considered in determining whether

the court has authority to correct the judgment rendered April 4, 1940.

In the Marsh case the insured veteran, through his legal guardian, obtained a judgment against the United States in a suit on his contract of war risk insurance. After said judgment had become final, the Comptroller General attempted to set off against it an amount found by the Administrator of Veterans Affairs to be due from the veteran because of disability compensation held by the Administrator to have been fraudulently obtained.

The Court of Appeals held that the alleged overpayment could not be recovered administratively, but that suit to establish such a set-off should have been seasonably brought by the Government, at the instance of the Comptroller General, under the statute regulating offsets on judgments and claims against the United States. (Act of March 3, 1933, c. 212, 31 U. S. C. Sec. 227.)

Manifestly, the Marsh case has no bearing upon the question presented by defendant's motion to correct the judgment rendered in this case on April 4, 1940.

Here, neither the Administrator of Veterans Affairs nor the Comptroller General is taking the matter of correcting said judgment into his own hands, but the administrative department of the Government is doing what the Court of Appeals said should have been done in the Marsh case, namely, seeking the judicial relief provided by law—in this case, rules of court which have the force of law.

II

Whether the Judgment Rendered April 4, 1940, Complies With Section 303 of the World War Veterans' Act, 1924, as Amended March 4, 1925

1. Purpose of said statute as shown by its legislative history

22 Section 402 of the War Risk Insurance Act of October 6, the insurance granted thereby in two hundred and forty equal monthly installments, and designating the permissible beneficiaries thereof, further provided:

"If no beneficiary within the permitted class shall be designated by the insured, either in his lifetime or by his last will and testament, or if the designated beneficiary does not survive the insured, the insurance shall be payable to such person or persons within the permitted class of beneficiaries as would under the laws of the States of the residence of the insured be entitled to his personal property in case of intestacy."

By the amendatory Act of December 4, 1919 (41 Stat. 375, 376), Congress, in Section 13 thereof, enlarged the permitted

class of beneficiaries, and in Sections 15 and 16 provided separately for the payment of yearly renewable term and converted insurance upon the death of the insured and the failure of beneficiaries, as follows:

"SEC. 15. That if any person to whom such yearly renewable term insurance has been awarded dies, or his rights are otherwise terminated after the death of the insured, but before all of the two hundred and forty monthly installments have been paid, then the monthly installments payable and applicable shall be payable to such person or persons within the permitted class of beneficiaries as would, under the laws of the State of residence of the insured, be entitled to his personal property in case of intestacy; and if the permitted class of beneficiaries be exhausted before all of the two hundred and forty monthly installments have been paid, then there shall be paid to the estate of the last surviving person within the permitted class the remaining unpaid monthly installments.

"SEC. 16. That if not beneficiary within the permitted class be designated by the insured as beneficiary for converted insurance, granted under the provisions of Article IV of the War Risk Insurance Act, either in his lifetime or by his last will and
23 testament, or if the designated beneficiary does not survive the insured, then there shall be paid to the estate of the insured the remaining unpaid monthly installments; or if the designated beneficiary survives the insured and dies before receiving all of the installments of converted insurance payable and applicable, then there shall be paid to the estate of such beneficiary the remaining unpaid monthly installments."

By Section 26 of the Act of August 9, 1921 (42 Stat. 148), a new section (Sec. 407) was added to Article IV of the War Risk Insurance Act, which section, so far as pertinent here, read:

"SEC. 407. If no person within the permitted class of beneficiaries survive the insured, then there shall be paid to the estate of the insured the monthly installments payable and applicable under the provisions of Article IV of the War Risk Insurance Act: * * *"

Thus the law on this subject stood until the passage of the World War Veterans' Act, 1924 (43 Stat. 607), which repealed the War Risk Insurance Act and its amendments, but reenacted many of its provisions, with some amendments.

Section 300 of the 1924 statute designated the permissible beneficiaries for both term and converted insurance, while Section 303 of said Act provided:

"SEC. 303. If no person within the permitted class of beneficiaries survive the insured, or if before the completion of payments the beneficiary or beneficiaries shall die and there be no surviving person within said permitted class, then there shall

be paid to the estate of the insured, the present value of the monthly installments thereafter payable under the provisions of this title: * * * This section shall be deemed to be in effect as of October 6, 1917."

While Section 303 of the 1924 statute inaugurated the method of paying the present or commuted value of the remaining monthly installments of insurance benefits accruing after the death of the insured or the designated beneficiary, it will be noted that said method did not become operative unless there was no surviving person within the permitted class of beneficiaries.

24 To remedy this situation, and discontinue (with certain exceptions) the further payment of insurance benefits on the installment plan, Congress, at the instance of the Director of the Veterans' Bureau, passed the Act of March 4, 1925, amending Sections 301 and 303 of the World War Veterans' Act, as set out above.

That such was the purpose of the Act of March 4, 1925, appears from an explanatory letter proposing amendments to Section 303 submitted by General Hines, Director of the Veterans' Bureau, to the House Committee on World War Veterans' Legislation on January 6, 1925. In said letter General Hines stated (Hearings before said Committee, 68 Cong. 2d Sess. on H. R. 10271, p. 94):

"Recommendation No. 13.—That Section 303, Title III, which provides for the distribution of insurance under certain circumstances, but which is incomplete, be repealed and a new section enacted to be known as Section 303 of the World War Veteran Act, such section to provide for the distribution of insurance when there is no designated beneficiary to take, either in the first instance or where the designated beneficiary dies and there is no alternate beneficiary named. The existing law provides for the distribution of insurance if no beneficiary is designated and the insured dies only where there is no person within the permitted class alive at the death of the insured, or if such person or persons dies and there is no surviving person within said permitted class. No provision is made in the law for distribution of insurance under either of the above-mentioned contingencies where members of the permitted class survive. It was at first thought that the provisions previously contained in the War Risk Insurance Act as amended with reference to this subject should be incorporated in the World War Veterans Act. However, the Bureau had encountered great administrative expense under the provisions of that act which still govern insurance issued prior to June 7, 1924, in attempting correctly to distribute insurance to persons of the permitted class who would take under the intestacy laws of the States. In many instances the payments are so divided as to result in absurdly small monthly amounts to a large number of persons.

25 "It is not believed that any good purpose is served by the method of distribution provided for in the War Risk Insurance Act as amended, and in view of this fact it is suggested that the amendment, which is necessary by reason of the incompleteness of the World War Veterans Act, be so written as to provide for the payment of such insurance as is payable where no beneficiary is named, or where the designated beneficiary dies without receiving all the installments, in one sum to the estate of the insured. The result of such a change in the law will not greatly affect the persons to take, but will affect the period of payments. The Bureau will be able under such an amendment immediately to discharge its obligation, rather than have to continue to send small amounts to a large number of persons over a period of twenty years. In a large number of cases these amounts are so small as to be of no material benefit to the persons receiving them."

I have quoted said recommendation from the appendix to the plaintiffs' response to defendant's memorandum submitted to me on December 13, 1940, with the underscoring as made by plaintiffs' counsel.

Plaintiffs' counsel seems to attach considerable significance to the fact that in said recommendation General Hines stated that the provisions of the War Risk Insurance Act still governed insurance issued prior to June 7, 1924.

Generally speaking, such was the case. While Section 303 as enacted June 7, 1924 provided that said section "shall be deemed to be in effect as of October 6, 1917," said section covered only the payment of insurance benefits where there was no surviving person within the permitted class of beneficiaries.

Moreover, Section 602 of the World War Veterans' Act, 1924, saved all rights and liabilities which had accrued under the War Risk Insurance Act and its amendments.

But whatever the scope of Section 303 as originally enacted, the last paragraph of General Hines' statement shows that the
26 amendment proposed was for the express purpose of correcting "the incompleteness" of original Section 303 in the respects mentioned by him; and as to the effect of such amendment he said that "The Bureau will be able under such an amendment immediately to discharge its obligation, rather than have to continue to send small amounts to a large number of persons over a period of twenty years."

It was, presumably, to effectuate said purpose, as well as to remove any doubt as to the retroactive nature of Section 303 as amended March 4, 1925, that Congress provided therein that said section, as so amended, should be retroactive to October 6, 1917. Furthermore, said amendatory Act contains no general provision

similar to Section 602 of the World War Veterans' Act, saving rights and liabilities previously accrued.

It is also to be noted that whereas, in the amendatory Act, Section 303, relating to term insurance, was made retroactive to October 6, 1917, Section 301, dealing with converted insurance, was made retroactive only to June 7, 1924.

H. R. 10271 was not passed, H. R. 12308 of the same Congress being substituted therefor. In reporting the latter bill, which became the Act of March 4, 1925, the House Committee on World War Veterans' Legislation said (H. R. Rept. 1518, on H. R. 12308, 68th Cong., 2d Sess.):

"20. Section 20 amends section 303 of the World War Veterans' act, in that it provides with reference to yearly renewable term insurance that where no beneficiary of the permitted class survives the insured, or if no beneficiary be designated by the insured during his lifetime the present value of the unpaid installments shall be payable to the estate of the insured. This measure is in the interest of economical administration on the part of the bureau and also to eliminate the necessity for continuing estates for indefinite periods. It also prevents those spectacles of injustice where the bureau by reason of the existing provisions of the law or the war risk insurance act as amended, as being paying absurdly small amounts monthly to a large class of beneficiaries. This section in no way affects the eventual liability of the United States, but it does accelerate to some extent that liability."

27 A similar statement was made in said Committee report as to the purpose of Section 19 of the bill amending Section 301 so as to make converted insurance payable to the estate of the insured, or to the estate of the beneficiary, according to the present value of the remaining monthly installments.

Said bill (H. R. 12308) was passed by the House, without amendment, on the day it was reported, and then sent to the Senate. In explaining the bill to the Senate, Senator Reed stated, with respect to the provisions which became Sections 13 and 14 of the Act of March 4, 1925 (66 Cong. Rec. pt. 5, p. 5262):

"The next section, which Senators will find beginning on page 45 and running over to page 48, simply puts into the law the regulations which are now in effect regarding commutation of payments in cases of death where the beneficiaries die and the law provides that the amount shall be paid to the man's estate if the beneficiaries disappear. Under the present law a man's estate has to be kept alive, its administration has to be kept going, sometimes for as long as 20 years. Nobody benefits from that. This section provides for a commutation and the payment of the present value of the insurance to the administrator or executor of the insured person."

2. JUDICIAL CONSTRUCTION OF SECTION 303 AS AMENDED MARCH 4, 1925

The difference between Section 303 of the World War Veterans' Act as enacted June 7, 1924, and said section as amended by the Act of March 4, 1925, is thus stated by the District Court, Northern District of New York, in Hatch v. United States, 29 F. 2d 213, 220, decided November 7, 1928:

"As originally enacted on June 7, 1924, section 303 merely provided that, if no person within the permitted class of beneficiaries survived the insured, or if before the completion of payments the beneficiary should die, there being no surviving person within said permitted class, then the insurance, or the remainder thereof, should be paid to the estate of the insured in a lump sum. This covered a very limited field, being confined to cases where there were no persons within the permitted class who survived the insured in the one case, or who survived the beneficiary in the other case.

"The department had found the long-continued monthly payments burdensome, and sought to have it changed to a lump sum liquidation plan. Congress by the amendment of March 4, 1925, expanded the field covered by Section 303 to include additional cases. As thus amended, section 303, in the provision prior to the proviso, was made to cover the following cases of award and payment of insurance to deceased soldiers: (1) Where no person is designated as beneficiary. (2) Where the designated beneficiary does not survive the insured. (3) Where the designated beneficiary survives the insured, but dies before receiving all of the 240 installments.

"In all such cases, the amended section provides that the payment of the insurance, or the remainder thereof, should be made in a lump sum to the estate of the insured, regardless of whether or not there are survivors within the permitted class, and not as under Section 402 of the former act, to the heirs of the insured in monthly payments for 20 years."

In the Hatch case the insured died on October 12, 1918, without having designated any beneficiary in his lifetime, and the Bureau, on August 12, 1919, awarded and began payment of the insurance to his father and three brothers, but failed to include his mother, the applicable statute then being Section 402 of the War Risk Insurance Act of October 6, 1917, as amended June 25, 1918. In November, 1925, the Bureau terminated all payments under the award, and, after first holding that the mother should have been included in said award, and then that the nephews of the insured who had been designated by the insured in his will as his beneficiaries were entitled to the insurance, finally ruled, on

September 14, 1926, that the commuted value of the balance
29 of the insurance was payable to the executor of the estate of the insured under Section 303 as amended March 4, 1925. Thereupon a suit in equity was brought by the father and brothers of the insured to have the Government resume payments of the awards made to them in 1919.

Notwithstanding the great difference between Section 303 as originally enacted and as amended by the Act of March 4, 1925, and the fact that the amended section was made effective as of October 6, 1917, the District Court held that the amended section did not apply to the insurance there in suit because Section 602 of the World War Veterans' Act, 1924, provided that the repeal by said Act of the War Risk Insurance Act and other statutes should not affect any act done or any right or liability accrued under said Acts. Said court also held that, in any event, the awards were in course of payment within the meaning of the first proviso of Section 303 as amended by the Act of March 4, 1925.

I think the District Court, in the Hatch case, correctly held that the award made by the Bureau to the father and brothers of the insured in 1919 came within the first proviso of Section 303 as amended March 4, 1925, but that said court was mistaken as to the bearing of Section 602 of the World War Veterans' Act, 1924 upon the amendment of Section 303 by the Act of March 4, 1925.

As I read Section 303 as amended by the Act of March 4, 1925, it was intended to supersede all prior legislation with respect to the payment of amounts or balances due under contracts of yearly renewable term insurance, upon the death of the insured or the designated beneficiary, said purpose being evidenced by the history of said statute referred to above, the exceptions stated in the provisos thereto, and the final statement therein that "This section shall be deemed to be in effect as of October 6, 1917."

Moreover, I am unable to perceive why the general saving clause in Section 602 of the 1924 statute should be held to control the particular and specific expression by Congress of its will in regard to the payment of yearly renewable term insurance in the 1925 statute. Certainly, the general rule is that the later statute controls, except as otherwise stated therein. Section 303, as amended in 1925, contains its own limitations.

30 If, prior to the Act of March 4, 1925, the designated beneficiary or any other person or estate, had acquired a *vested right* to receive payment of the remaining monthly installments as they accrued, a different situation would be presented. But the decisions of the Supreme Court as to rights of beneficiaries refute such a view.

White v. United States, 270 U. S. 175, decided March 1, 1926.

Singleton v. Cheek, 284 U. S. 493, decided February 15, 1932.
McCullough v. Smith, 293 U. S. 288, decided December 3, 1934.

Thus, in the White case, the Supreme Court, speaking by Mr. Justice Holmes, and referring to the contention that the mother's interest as the designated beneficiary of her son's war risk insurance "vested as absolute at the son's death, and could not be defeated by later legislation," said (270 U. S. at p. 180), italics mine:

"The certificate of insurance provided in terms that it should be 'subject in all respects to the provisions of such act (of 1917), of any amendments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which, together with the application for this insurance, and the terms and conditions published under authority of the Act, shall constitute the contract.' These words must be taken to embrace changes in the law no less than changes in the regulations. The form was established by the Director with the approval of the Secretary of the Treasury and on the authority of Article I, Sec. 1, and Article IV, Sec. 402, of the Act, which, we have no doubt, authorized it. The language is very broad and does not need precise discussion when the nature of the plan is remembered. The insurance was a contract, to be sure, for which a premium was paid, but it was not one entered into by the United States for gain. All soldiers were given a right to it and the relation of the Government to them if not paternal was at least avuncular. It was a relation of benevolence established by the Government at considerable cost to itself for the soldier's good. It was a new experiment in which changes might be found necessary, or at least, as in this case, feasible more exactly to
31 carry out his will. *If the soldier was willing to put himself into the Government's hands to that extent no one else could complain. The only relations of contract were between the Government and him. White's mother's interest at his death was vested only so far as he and the Government had made it so, and was subject to any conditions upon which they might agree. They did agree to terms that cut her rights down to one-half.*" She is a *volunteer* and she cannot claim more. See Helmholz v. United States, 294 Fed. 417, affirming 283 Fed. 600. Gilman v. United States, 294 Fed. 422, affirming 290 Fed. 614.

The agreement as to the terms and conditions of the insurance contract, to which the Supreme Court referred in the White case, was the provision in the certificate of insurance that such insurance should be "subject in all respects to the provisions of such Act (of 1917), of any amendments thereto," etc. The decision in the White case was, therefore, not rested upon the fact (as plaintiffs' counsel in the case at bar suggests) that when White applied for the insurance he had indicated a desire that one-half of the insurance should go to his aunt, not then within the permissible class

of beneficiaries, but who was later brought within that class by the amendatory Act of December 24, 1919.

The broad authority of Congress over the subject of beneficiaries established by the decision of the Supreme Court in the White case was recognized by the District Court in the Hatch case, supra, which sought to distinguish the Hatch case on the ground that the amendment of Section 303 made by the Act of March 4, 1925, was not to be given a retroactive effect—a view which, for the reasons stated above, I think untenable.

The Hatch decision as to the non-retroactive effect of the Act of March 4, 1925, is not only inconsistent with the principles announced as to the nature of the beneficiary's right in White v. United States, but is also in conflict with the decisions of the Supreme Court in Singleton v. Cheek and McCullough v. Smith, supra, which were decided after the Hatch case.

32 Thus, in Singleton v. Cheek, referring to the amendment to Section 303 made by the Act of March 4, 1925, the Supreme Court said (284 U. S. at p. 407):

The amendment, in express terms, was made retroactive so as to take effect as of October 6, 1917, a provision undoubtedly within the power of Congress, for the reasons stated by this court in White v. United States, 270 U. S. 175.

"By that amendment, the rule, which, upon the happening of the contingencies named in the prior acts, limited the benefit of the unpaid installments to persons within the designated class of permittees, was abandoned, and 'the estate of the insured' was wholly substituted as the payee. All installments, whether accruing before the death of the insured or after the death of the beneficiary named in the certificate of insurance, as a result, became assets of the estate of the insured upon the instant of his death, to be distributed to the heirs of the insured in accordance with the intestacy laws of the state of his residence, such heirs to be determined as of the date of his death, and not as of the date of the death of the beneficiary. The state courts, with almost entire unanimity, have reached the same conclusion."

And in the McCullough case, the Supreme Court said (293 U. S. at p. 231):

"Considering what was said in United States v. Worley, 281 U. S. 339, 341, and in Singleton v. Cheek, supra, together with the language and evident purpose of the act of 1924 as amended, we think it clear enough that installments which accrued in favor of the father and mother of Reid as beneficiaries during their lives became the property of their respective estates. *Also that installments which accrued to the assured during his lifetime, and the commuted value of the installments payable subsequent to the mother's death, became the property of his estate.*"

33 There is nothing in Lynch v. United States, 292 U. S. 571 which conflicts with the views announced by the Supreme Court in the White, Singleton and McCullough cases as to the power of Congress to control the payment of yearly renewable term insurance to beneficiaries under the insurance contract. On the contrary the doctrine of the White case was expressly recognized by the court in the Lynch case.

It is true it was held in the Lynch case that the insurance constituted a contract between the soldier and the Government—but that view of the insurance had theretofore been recognized in the White case. It was also held in the Lynch case that while the payment of the insurance could be regulated by Congress, by extending the class of beneficiaries and changing the method of payment, (see statutes referred to by the court in the notes to the opinion), "no power to curtail the amount of the benefits which Congress contracted to pay was reserved to Congress; and none could be given by any regulation promulgated by the Administrator."

Manifestly, Section 303 of the World War Veterans' Act, 1924, as amended March 4, 1925, in providing that the present value of the monthly installments remaining unpaid on the death of the insured or of the designated beneficiary, does not curtail the amount due under the insurance contract, but merely facilitates its payment.

In Lopez v. United States, 82 F. 2d 982, 987, the Circuit Court of Appeals for the Fourth Circuit, in dealing with the question of limitations, referred to the statutes I have been discussing, as to which that court said:

"* * * The result of these enactments is that when a liability under a policy is established, but the insurance has not been paid prior to the death of the insured, the installments which would have accumulated from the date of the insured's permanent and total disability to the date of his death should be paid to his estate, while those which would have accumulated from his death to the
34 date of the death of the beneficiary should be paid to the estate of the beneficiary, and the commuted value of the installments remaining should be paid to the estate of the insured." McCullough v. Smith, 293 U. S. 228, 55 S. Ct. 157, 79 L. Ed. 297; Pagel v. Pagel, 291 U. S. 473, 54 S. Ct. 497, 78 L. Ed. 921; Singleton v. Creek, 284 U. S. 493, 52 S. Ct. 257, 76 L. Ed. 419, 81 A. L. R. 923.

The law of the present case is not changed by the fact that when the judgment sought to be corrected was rendered, sufficient time had elapsed from the death of the beneficiary to pay all of said 184 monthly installments of insurance benefits.

Moreover, upon the refusal of the Bureau, in its letter of March 6, 1920, to recognize the insurance as being in force, the beneficiary, under the legislation of Congress then in force, might immediately have brought suit on the insurance contract; and if such a suit had been prosecuted to a successful conclusion prior to the passage of the World War Veterans' Act, 1924, or of the amendment Section 303 of the Act of March 4, 1925, payment on the monthly installment plan might possibly have been obtained under the earlier statutes. This suit was not filed, however, until November 6, 1925.

Regardless of the persons or circumstances responsible for the long delay in bringing this suit to a conclusion, the right of the estate of the insured to the present value of the installments of insurance here in question was definitely fixed by the Act of March 4, 1925, as of the date of the beneficiary's death. Nothing in the way of compensation for such delay can be allowed by the court, even if the delay were attributable to the Government or its agents, since Congress has not authorized the payment of interest or damages on past due installments of war risk insurance benefits. (United States v. Worley, 287 U. S. 399.)

3. ADMINISTRATIVE CONSTRUCTION OF SECTION 303 AS AMENDED MARCH 4, 1925

The administrative construction of Section 303 of the World War Veterans' Act, 1924, as amended March 4, 1925, appears to have started with an opinion dated May 14, 1925, rendered
35 by the General Counsel of the Veterans' Bureau to the Director in the case of Arthur O'Neill Cody. Copies of this and two prior opinions of the General Counsel in the Cody case, dated respectively November 4, 1924, and January 7, 1925, are attached to a memorandum for defendant filed with this report.

It appears from said opinions that Cody died, June 5, 1922, leaving no surviving relatives within the permitted class; that he had previously been awarded permanent and total benefits under his insurance contract, and that pursuant to an opinion of the Bureau dated April 6, 1923, the remaining monthly installments were awarded to the executor of his estate under the provisions of Section 407 of the War Risk Insurance Act.

In the General Counsel's opinion of November 4, 1924, it was held that, under Section 303 as enacted June 7, 1924, the present value of the remaining monthly installments might be paid to the executor, using the term present value to mean the installments of renewable term insurance "purged of all interest." In so holding the General Counsel followed an opinion of his office of June

20, 1924, which held that the provision for paying the present value of the remaining installments contained in said section did not deprive any person of any substantial rights, and therefore Section 602 of said Act did not apply.

On January 7, 1925, the General Counsel rendered another opinion in the Cody case in which he held that Section 303 as originally enacted was retroactive to October 6, 1917, and that the expression (if before the completion of payments the beneficiary or beneficiaries shall die * * * then there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable) referred "to the date of the death of the beneficiary or beneficiaries or the date of the death of the insured where no beneficiary within the permitted class survives him."

Said opinion further stated:

36 "From the foregoing conclusions it is the opinion of this office that the present value of the remaining monthly installments of insurance must be calculated from the date of the death of the beneficiary or beneficiaries or from the date of the death of the insured in those cases in which no beneficiaries within the permitted class survive the insured, regardless of whether the death occurred prior or subsequent to June 7, 1924."

This decision was approved by the Director on June 10, 1925.

The Cody case (along with two others) was the subject of still another opinion of the General Counsel to the Director of the Veterans Bureau, rendered May 14, 1925. Said opinion dealt with the interpretation of Section 303 as amended March 4, 1925, and particularly its requirement that the present value of the remaining installments be computed as of the date of the last payment made under an existing award.

In his opinion of May 14, 1925, the General Counsel stated that the insured had been paid monthly installments of insurance from November 1, 1918, to June 30, 1922, and that the remaining installments had been awarded to his executor under Section 407 of the War Risk Insurance Act to run from July 1, 1922, to October 31, 1938. He then quoted the clause in Section 303 as amended March 4, 1925, as to how the present value of the remaining monthly installments should be computed, and said:

"This office will, therefore, amend its prior opinion in view of the change in the language in Section 303 to the effect that the present value is to be computed as of the date of last payment made under any existing award. In the Cody case it would appear that the existing award is that to the executor to run from July 1, 1922, to October 31, 1938. If this statement be correct then the present value of the remaining term insurance should be computed as of the date of the last payment under that award.

* * * * * *

37 "The Claims and Insurance Service suggests that the date of last payment should be construed to mean the last day of the calendar month under the Bureau's system of payment. While it may be true that as a matter of convenience insurance awards are paid by calendar months, nevertheless, attention is called to the fact that insurance does not accrue on the basis of a calendar month as that term is popularly understood. The insurance accrues in months reckoning from the anniversary date of the insured's death and it is the opinion of this office that in computing the present value of the insurance the computation should be based upon the anniversary date rather than upon the last day of the calendar month."

This opinion also bears the approval of the Director.

The decision of the Comptroller General, rendered January 26, 1926, in the case of Russell W. Walker, 5 Comp. Gen. 501, also supports the views expressed in this report as to the application of Section 303 as amended March 4, 1925. In that decision the Comptroller General advised the Director of the Veterans Bureau:

"The policy of insurance issued to Russell W. Walker, considered as never having lapsed because of uncollected disability compensation, matured by the happening of permanent total disability October 1, 1920, and the installments of insurance which should have been paid to the insured during his lifetime were properly awarded to the administrator of his estate. The rights of the death beneficiary to the remaining unpaid installments became fixed at the date of death of the insured, February 18, 1921, under the provisions of law then effective.

* * * * * *

"Under section 402 of the war-risk insurance act, as amended by the act of June 25, 1918, 40 Stat. 615, 616, award should have been made to such person or persons within the permitted class of beneficiaries as would under the laws of the State of the
38 residence of the insured be entitled to his personal property in case of intestacy * * *.

"But as no such award appears to have been made, payment should now be made to the estate of the insured under the provisions of section 303 of the World War veterans' act as amended by section 14 of the act of March 4, 1925, 43 Stat. 1310, which is retroactively effective to October 6, 1917, except in so far as affecting payments under existing awards legally made."

The above decisions of the General Counsel of the Veterans Bureau and the Comptroller General appear to have established the administrative construction of Section 303 as amended March 4, 1925, and no departure therefrom appears to have been sanctioned by either official. On the contrary, it was because of the refusal of the Comptroller General to approve the judgment

rendered by this court on April 4, 1940, in respect to the amount allowed the administratrix of the estate of the insured, that this motion to correct said judgment was made.

4. AS TO THE CLAUSE IN AMENDED SECTION 303 REQUIRING THAT THE PRESENT VALUE OF THE UNPAID MONTHLY INSTALLMENTS BE COMPUTED AS OF THE DATE OF THE LAST PAYMENT UNDER AN EXISTING AWARD

Neither in the report of the House Committee on World War Veterans' Legislation on H. R. 12308, nor in Senator Reed's statement thereon was any reference made to the above-mentioned clause in Section 303, as amended March 4, 1925.

This is not surprising, since said clause relates to a matter of administrative detail, which would only arise where, on the death of the insured or of the designated beneficiary, there was an existing award under which some payment had been made. There was no such award in this case, so that there is no necessity for inquiring as to the exact scope of said clause. One phase of its application is discussed in the last paragraph of the opinion of the General Counsel of the Veterans Bureau of May 14, 1925, set out above.

39 Plaintiffs' counsel argues as if it were essential to the operation of amended Section 303 that there be an existing award at the time of the death of the insured or the designated beneficiary; but manifestly this is not so. The fundamental purpose of the amended section was to discontinue, except as stated therein, further payments on the monthly installment plan upon the death of the insured or the designated beneficiary, by paying the balance then due under the insurance contract in a lump sum.

Counsel for plaintiffs further contends that, since no award of benefits was ever made under the contract of insurance involved in this case, the judgment rendered by this court on April 4, 1940, in favor of the beneficiary's estate should be taken as such an award, and the date of said judgment, or the date of payment under said judgment, should be taken as the date upon which the present value of the remaining 184 installments should be calculated.

This contention ignores the fact that the only payment authorized by amended Section 303 to be made to the estate of the insured is the present value, on the death of the beneficiary, of the installments thereafter payable; while the insured's estate is here claiming the aggregate value of such monthly installments on a much later date.

5. AS TO THE METHOD OF COMPUTING THE PRESENT VALUE OF THE REMAINING 184 INSTALLMENTS

The basis for defendant's calculation of the present value of the 184 monthly installments of insurance benefits remaining unpaid on the death of the beneficiary on June 24, 1924, is shown by a letter, dated December 21, 1940, from the Director of Insurance of the Veterans' Administration to the Director of the Bureau of War Risk Litigation in the Department of Justice. Said letter (filed herewith) states:

40 "In compliance with your telephonic request for an explanation as to how commuted values are calculated, with special reference to the case of Joseph Kelly Kerr and the commuted or present value of 184 monthly installments, the following is submitted for your consideration.

"The present or commuted value of a monthly annuity certain due, that is, a series of payments made at the beginning of each month for a specified number of months, is that amount which is placed at interest at a certain assumed rate will provide for the payment of each installment as it falls due. When the last installment falls due the amount in the fund will exactly equal this installment and the fund will be exhausted. Thus it will be seen that each monthly payment after the first is made up partly of principal and partly of interest. When a series of payments is given and it is desired to obtain the commuted or present value of the series, each payment falling due after a certain date is discounted back to that date and the sum of the discounted values is the present or commuted value of the series of installments.

"$10,000 is the commuted or present value of 240 monthly installments of $57.50 each on a 3½% interest basis.

"Insured died Nov. 8, 1919—Beneficiary died June 28, 1924.

"56 installments of $57.50 each from Nov. 8, 1919, to June 8, 1924, inclusive, $3,220.00.

"Commuted or present value of remaining 184 installments of $57.50 each is $8,233.5788, $8,234.00.

"This commuted or present value is the sum that will purchase 184 installments of $57.50 each, payable monthly, on a basis of 3½% interest, compounded annually."

It will be noted that Section 301 of the World War Veterans' Act, 1924, as amended March 4, 1925, provides:

41 "The insurance except as provided herein shall be payable in two hundred and forty equal monthly installments. Provisions for maturity at certain ages, for continuous installments during the life of the insured or beneficiaries, or both, for cash,

loan, paid up and extended values, dividends from gains and savings, and such other provisions for the protection and advantage of and for alternative benefits to the insured and the beneficiaries as may be found to be reasonable and practicable, may be provided for in the contract of insurance, or from time to time by regulations. All calculations shall be based upon the American Experience Table of Mortality and interest at 3½ per centum per annum, except that no deduction shall be made for continuous installments during the life of the insured in case his total and permanent disability continues more than two hundred and forty months. Subject to regulations, the insured shall at all times have the right to change the beneficiary or beneficiaries without the consent of such beneficiary or beneficiaries, but only within the classes herein provided."

CONCLUSION

For the reasons stated above, I recommend that defendant's motion to correct the judgment rendered by this court on April 4, 1940, be sustained, and said judgment corrected as set forth in the form of order submitted with this report.

Respectfully submitted.

WILLIAM R. HARR,
Commissioner, Veterans' Cases.

cc CAMDEN R. MCATEE,
Attorney for Plaintiff.
United States Attorney.

42 *The orders appealed from*

ORDER CORRECTING JUDGMENT RENDERED APRIL 4, 1940, AND OVERRULING MOTION FOR AWARD OF INTEREST

Entered Jan. 9/41

This matter coming on to be heard upon defendant's motion to correct the judgment rendered by this Court on April 4, 1940, and entered April 5, 1940; and the Court finding:

(1) That no question is made by defendant as to the correctness of the amount of $3,220 awarded by said judgment to the plaintiff, Elizabeth Kerr, administratrix of the estate of Eugene Kerr, beneficiary of the insurance contract sued upon, which sum represents the aggregate of the 56 monthly installments of $57.50 each accruing from the death of the insured on November 8, 1919, to the death of the beneficiary on June 24, 1924.

(2) That the amount of $10,580 awarded by said judgment to the plaintiff, Elizabeth Kerr, administratrix of the estate of the

insured, Joseph Kelly Kerr, is based upon the aggregate value of the 184 monthly installments of $57.50 each payable through October 1939 after the death of the beneficiary on June 24, 1924, and not upon the present value of said installments as computed on said date, as required by Section 303 of the World War Veterans' Act, 1924, as amended March 4, 1925 (38 U. S. C. Sec. 514), and is thereby in error, which error, the court finds, is the result of mistake and inadvertence on the part of counsel for the defendant in consenting to said judgment award for entry by the Court.

(3) That the present or commuted value of said remaining 184 monthly installments of $57.50 each, on the death of the beneficiary on June 24, 1924, calculated on a 3½% interest basis, as provided in Section 301 of the World War Veterans' Act, 1924, as amended March 4, 1925, is $8,234.00.

43 (4) And that the sum of $6.50 is admitted by counsel for plaintiffs to be due and owing the United States on account of unpaid premium on said insurance for November 1919:

It is this 9th day of Jan. 1941, ordered, adjudged, and decreed, That the judgment for $3,220 rendered by this court on April 4, 1940, in favor of the plaintiff Elizabeth Kerr, administratrix of the estate of Eugene Kerr, beneficiary of the insurance contract sued upon, is correct and is hereby confirmed; subject as therein provided to the payment to Camden R. McAtee, attorney of record for said plaintiff, of ten percent of said judgment, to wit, $322, for legal services to said plaintiff in this suit and in reduction of the amount payable to said plaintiff.

It is further ordered, adjudged, and decreed, That the judgment for $10,580 rendered by this court on April 4, 1940, in favor of the plaintiff Elizabeth Kerr, administratrix of the estate of the insured, Joseph Kelly Kerr, be and it is hereby reduced, nunc pro tunc, to $8,227.50, which last-mentioned amount represents the present value on June 24, 1924, the date of death of the beneficiary of the insurance contract, of the 184 monthly installments of insurance contract benefits of $57.50 each thereafter payable through October 1939, after deducting therefrom the sum of $6.50 on account of the unpaid premium on said insurance for November 1919, and that said plaintiff do have and recover from the defendant the said sum of $8,227.50 as of April 5, 1940, subject to the payment to Camden R. McAtee, attorney of record for said plaintiff, of ten percent thereof, to wit, $822.75, for legal services to said plaintiff in this suit, and in reduction of the amount payable to said plaintiff.

* * * Ordered that said plaintiff's motion for award of interest upon the judgment awards of recovery be and same is overruled.

44 *Notice of appeal from parts of judgment and final order*

Filed January 23, 1941

To Hon. EDWARD M. CURRAN,
United States District Attorney for the District of Columbia:

Notice is hereby given that Elizabeth Kerr, Admx. of the Estate of Joseph Kelly Kerr, deceased, plaintiff herein, hereby appeals to the United States Court of Appeals for the District of Columbia from the parts of the final judgment and order entered in this action on January 9, 1940, which provide, respectively, as follows:

(a) "That the judgment for $10,580 rendered by this Court on April 4, 1940, in favor of the plaintiff Elizabeth Kerr, administratrix of the estate of the insured, Joseph Kelly Kerr, be and it is hereby reduced, nunc pro tunc, to $8,227.50, which last-mentioned amount represents the present value on June 24, 1924, the date of death of the beneficiary of the insurance contract, of the 184 monthly installments of insurance contract benefits of $57.50 each thereafter payable through October 1939, after deducting therefrom the sum of $6.50 on account of the unpaid premium on said insurance for November 1919, and that said plaintiff do have and recover from the defendant the said sum of $8,227.50 as of April 5, 1940, subject to the payment to Camden R. McAtee, attorney of record for said plaintiff, of ten percent thereof, to wit, $822.75, for legal services to said plaintiff in this suit, and in reduction of the amount payable to said plaintiff."

(b) That the plaintiff motion for award of interest upon the judgment award entered on April 4, 1940, be and same is overruled.

45 *Order as to appeal undertaking*

Entered January 23, 1941

The plaintiff having filed her notice of appeal to the United States Court of Appeals for the District of Columbia from the judgment and order entered herein on January 9, 1941, and having moved for a limited cost bond, or undertaking, and the Court being advised, it is this 23rd day of January 1941,

Considered and ordered that the penalty of said bond or undertaking on said appeal be and the same is fixed at the sum of $100.00 with leave to deposit in the court Registry the sum of $50.00 in cash in lieu of such bond or undertaking.

Memorandum

February 21, 1941

Deposit $50.00 by McAtee in lieu of bond on appeal.

46 *Points relied on by Appellant*

Where 240 monthly installments of $57.50 each of term insurance, payable but unpaid between November, 1919 and October, 1939, had entirely accrued, and, in April, 1940, were judicially to be awarded as recoveries separately to the Estate of the Beneficiary, who died after surviving insured, in the amount of the installments payable and applicable as accrued at the death of the beneficiary in June, 1924, and to the Estate of the insured in the amount of the present value of the installments thereafter payable computed as of date of last payment made under any existing award:

I—The material points of appellant are (1) that the April, 1940, judgment award of $10,580.00 to the Estate of insured as the uncommuted amount of the installments payable after June 1924, after judgment award to the Estate of the beneficiary, is the correct application of Section 303, World War Veterans' Act, as amended March 3, 1925; and (a) alternatively, that any correction thereof is to be made by direction of the Comptroller General of the United States under the Act of 1933, with allowance of interest upon amounts withheld and determined to be in excess of the demand of the United States; and therefore:

That the Court below erred:

(a) In holding Section 303 limits the judicial award to the Estate of the insured to the present commuted value, at the date of death of the beneficiary, of the monthly installments thereafter payable.

(b) In not holding judicial award to the estate of the beneficiary is determinative of the date of last payment under any existing award for purposes of the statutory commutations, if any, of the monthly installments, payable after death of the surviving beneficiary, into present value for judicial award thereof to the estate of the insured.

(c) In holding the remedy for seeking correction of said judgment award for $10,580.00 was Rule 60, F. R. C. P., and not the Act of 1933 applicable to judgment recoveries against the United States.

47 (d) In holding said judgment award of $10,580 was subject to correction as in error because of mistake or inadvertence of defendant counsel in consenting to its entry.

(e) In holding plaintiff not entitled to interest upon the amount of said judgment award not in controversy and withheld from payment.

II—That the Court below erred:

In that the orders appealed from (a) are not sustained by, and are contrary to the facts and evidence, (b) are contrary to law, and (c) their reversal upon law and fact is required in the interest of justice.

48 *Order of approval of agreed case*

Filed March 4, 1941

The parties by their attorneys having tendered herein an agreed statement of the case for approval and certification as the record upon appeal herein, and the Court being advised, it is this 4 day of March 1941,

Considered and ordered that said Agreed Statement be and same is approved as conforming in all respects to the truth and stating fully all matters necessary to present the questions raised by the appeal herein, and that same be certified to the United States Court of Appeals for the District of Columbia as the record upon said appeal.

49 *Approval of parties*

The undersigned as attorneys for the appellant and appellee herein hereby approve the foregoing agreed statement as a true and correct presentation of all matters of record pertaining to decision of the appeal, and consent that same be approved by the trial court herein, and certified to the appellate court as the record on appeal.

CAMDEN R. MCATEE,
Attorney for Appellant.
EDWARD M. CURRAN,
Attorney for Appellee,
U. S. Att.
Per J. B. C.

50 In District Court of the United States for the District of Columbia

[Title omitted.]

Order extending time

Filed March 4, 1941

The parties having this day tendered an agreed statement of the case, presenting the questions upon the appeal herein for

approval and certification thereof to the Court of Appeals, and it appearing the time allowed by rule for said approval and certification has not expired and extension thereof is necessary and has not heretofore been granted, it is this 4th day of March 1941:

Ordered that the time for filing said record and docketing the action be and same is extended ten days.

(S) F. DICKINSON LETTS,
Justice.

(S) CAMDEN R. MCATEE,
Attorney for Plaintiff.

No objection:

EDWARD M. CURRAN,
Attorney for Defendant.
U. S. Att.

51 District Court of the United States for the District of Columbia

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, hereby certify the foregoing pages numbered from 1 to 50, both inclusive, to be a true and correct transcript of the record, in accordance with Rule 76 of the Rules of Civil Procedure for the District Courts of the United States, in cause No. 70830 at Law, wherein Elizabeth Kerr, as Administratrix of the estate of Joseph Kelly Kerr, deceased, &c., is Plaintiff and The United States of America is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 6th day of March 1941.

[SEAL] C. E. STEWART, *Clerk.*

53 In United States Court of Appeals for the District of Columbia

No. 7847

ELIZABETH KERR, ADMINISTRATRIX OF THE ESTATE OF JOSEPH KELLY KERR, DECEASED, APPELLANT

v.

THE UNITED STATES OF AMERICA, APPELLEE

Appeal from the District Court of the United States for the District of Columbia

Decided June 30, 1941

Mr. Camden R. McAtee for appellant.

Mr. Keith L. Seegmiller of the Department of Justice, with whom Mr. Edward M. Curran, United States Attorney, Mr. Julius C. Martin, Director, Bureau of War Risk Litigation, and Mr. Wilbur C. Pickett, Special Asst. to the Attorney General, were on the brief, for appellee.

Before GRONER, Chief Justice, and MILLER and VINSON, Associate Justices.

Opinion

VINSON, Associate Justice: Joseph Kelly Kerr died on November 8, 1919. At that time he had in effect, as held by this court on December 4, 1939,[1] a policy of war risk insurance. Accordingly on April 5, 1940, the District Court entered a judgment of $3,220 for the estate of Eugene Kerr, the beneficiary under the policy, and a judgment of $10,580 for the estate of Joseph Kelly Kerr. On January 9, 1941, an order was entered reducing the latter judgment to $8,227.50. From that order this appeal is taken.

In the view we take of the case the sole question is as to how the amount of the judgment should be computed. The computation concerns the government's obligation to the estate of Joseph Kelly Kerr for 184 instalments. At one time the government met such an obligation by the continuance of the monthly payments. The statute was changed on June 7, 1924, retroactive to October 6, 1917, authorizing a single lump sum payment. The amount of this single payment was figured at the present value of the remaining instalments.

Under this state of the law the Veterans' Bureau was presented with the Cody case. Cody became permanently disabled on November 1, 1918. He received monthly benefits until his death on June 5, 1922. His executor received an award for instalment payments till October 31, 1938. These were paid until June 7, 1924,
the date of the lump sum statute. Under that statute it
54 was determined that the value of the lump sum payment was to be figured as of the date of Cody's death. That amount was ascertained and then the amount of the instalments already paid was deducted.

Then the Veterans' Bureau sponsored an amendment which became law on March 4, 1925, providing that the present value of the remaining instalments should be figured from the time of the last payment under any existing award. The Cody case was redetermined in accordance with this statute.

The pertinent statutory provision now reads:

"* * * if the designated beneficiary * * * survives the insured and dies prior to receiving all of the two hundred and forty installments or all such as are payable and applicable, there

[1] Kerr v. United States, 71 App. D. C. 222, 108 F. (2) 585.

shall be paid to the estate of the insured the present value of the monthly installments thereafter payable, said value to be computed as of date of last payment made under any existing award: * * * This section shall be deemed to be in effect as of October 6, 1917." [2]

Here, the insured died on November 8, 1919. The beneficiary died on June 24, 1924. The District Court entered judgment on April 5, 1940. No payments to the insured, his beneficiary, or the estates were made before the critical 240 months had passed after the insured's death, or before the court entered its judgment. The issue now before us is the computation of the 184 instalments payable to the estate of the insured. The government argues that the correct method is to take the present value of the 184 instalments as of the date of the beneficiary's death, $8,234.00.[3] The appellant claims that the correct method is to take the full value of the 184 instalments, $10,580.

This appears to be another instance of that frequently recurring situation in the law where the legislators had certain specific problems in mind but not this one when they passed an amendment. The 1924 amendment was passed to get away from long drawn out meagre monthly payments. The 1925 amendment was passed undoubtedly to resolve problems like that of the Cody case.

If the apparent rationales of the method of computation in the 1924 and 1925 amendments are considered this case is of easy resolution. The immediate reason for the 1924 amendment as has been noted was to avoid long continued small monthly payments. But after deciding on the lump payment, why was the amount set at the present value of the instalments rather than the total of what the instalments would be? Undoubtedly because the recipient immediately obtained the full use of the money. This is such a common method of determining value in annuities and the like that it calls for no further discussion. Then why did the 1925 amendment provide for the determination of the present value as of the last instalment payment rather than as of the date of the death of the insured or beneficiary? Undoubtedly because experience had revealed situations like the Cody case in which the determination of
55 present value as of a date previous to the last instalment payment assumes a use of money by the estate which it in fact never had.

Here the appellant's claim was not recognized till after more than the 240 months had passed. Applying the principles of computation shown in the 1924 and 1925 amendments there can be no doubt but that the appellant is entitled to the full value of his

[2] 38 U. S. C. A. § 514.

[3] The $6.50 difference betwen this figure and that of the amended judgment, $8,227.50, represents a deduction for premium due in the month of grace. See footnote 1.

share of those instalments (184). That is the sound result for this case. We are not impressed by the government's argument that under this result claimants may choose to wait in order to make a better investment.

If under our judicial tradition a court is not supposed to reason by analogy from a statutory doctrine as it does from the rules of the common law, then it can be shown that the specific use of language in the statute supports this same result. The statute provides that for a fact situation like the present one the estate of the insured is entitled to the present value of the instalments remaining payable, this value to be computed as of the date of the "last payment made under any existing award". At the time of judgment in this case it is clear that the present value of the remaining instalments in reality was their full value. The fact that here there was no last payment under an existing award should not mean that you take the present value as of the date of the insured's death like the first Cody case. True, the fact is, there was no last payment under an existing award. But that does not remove the statutory words. Neither does it mean that for this case you can say it is as though the statutory words were not there. While the statute makes its express statement in terms of the positive in a situation where there is a last payment, it also affords the guide for computation in this case.

It is clear that $6.50 representing the amount of premium due for the grace period should be deducted.[4] We reverse with instructions to enter judgment in accordance with this opinion.

Reversed.

56 In United States Court of Appeals for the District of Columbia

No. 7847, April Term, 1941

ELIZABETH KERR, ADMINISTRATRIX OF THE ESTATE OF JOSEPH KELLY KERR, DECEASED, APPELLANT

vs.

THE UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the District of Columbia

Before Honorable D. LAWRENCE GRONER, Chief Justice, and Honorable JUSTIN MILLER and FRED M. VINSON, Associate Justices.

[4] See footnote 3.

Judgment

June 30, 1941

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the order of the said District Court, in this cause, be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said District Court with instructions to enter judgment in accordance with the opinion of this Court.

Per Mr. JUSTICE VINSON.

JUNE 30, 1941.

57 [File endorsement omitted.]

58 In United States Court of Appeals for the District of Columbia

[Title omitted.]

Petition for rehearing

Filed July 15, 1941

Comes now the United States of America, by the undersigned attorneys, and respectfully prays that a rehearing be granted in the above-entitled case.

The opinion of the court in this case, rendered on June 30, 1941, indicates that the decision was reached without recognition of the fact that the court's construction of the statute involved (Section 303 of the World War Veterans' Act (38 U. S. C. 514)), is directly opposed to the administrative construction of the same statute, adopted at the time of its enactment more than seventeen years ago, and subsequently adhered to both administratively and judicially until the decision of this court in the present case.

59 The attached letter from the Administrator of Veterans Affairs, dated July 14, 1941, setting forth the original administrative construction and the long-continued uniform practice under it, shows (1) Section 303, as worded in the Act of June 7, 1924, has always been construed to mean that the amount payable to the estate of an insured is the value of the installments payable as of the date the estate became entitled to receive them; (2) that the Veterans Bureau prepared and recommended an amendment to the section (enacted on March 4, 1925) containing language embodied for the sole purpose of avoiding retroactive application of the statute, required by the construction above stated, to cases in

which installment awards to estates of insureds were in course of payment when the Act of June 7, 1924 was enacted;[5] (3) that achievement of this purpose required an amendment by reason of the administrative construction of the statute but not otherwise, and hence the enactment of the amendment as drafted by the Veterans Bureau clearly implies legislative adoption of the administrative construction.

Such a consistent administrative construction by the Veterans Administration has been held to be of "persuasive force." United States v. Madigan, 300 U. S. 500, 505. A construction of this character is "not to be overturned unless clearly wrong, or unless a different construction is plainly required." United States v. Jackson, 280 U. S. 183, 193. Especially is this true where, as here, the administrative agency charged with the duty of administering the statute has drafted amendatory legislation. The Supreme Court has frequently so held. See United States v. Moore, 95 U. S. 760, 763, in which it was said: "The officers concerned are usually able men, and masters of the subject. Not unfrequently they are the draftsmen of the laws they are afterwards called upon to interpret." And see also Norwegian Nitrogen Co. v. United States, 288 U. S. 294, 315, wherein it was pointed out that the administrative practice "has peculiar weight when it involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new."

The opinion of the court in the present case, recognizing that there was no specific Congressional intention to legislate with respect to a case like the present case, and otherwise indicating that the statute was regarded as ambiguous, contains nothing to indicate that the court intended to overturn an established and heretofore unchallenged administrative construction of the statute.

Respectfully submitted.

EDWARD M. CURRAN,
United States Attorney.

JULIUS C. MARTIN,
Directr, Bureau of War Risk Litigation.
WILBUR C. PICKETT,
Special Assistant to the Attorney General.
KEITH L. SEEGMILLER,
Keith L. Seegmiller,
Attorney, Department of Justice.

[5] The amendment provided that in such cases the value of the insurance should "be computed as of the date of last payment under any existing award."

(Copy)

61 OFFICE OF THE ADMINISTRATOR
OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION,
Washington, July 14, 1941.

Honorable CHARLES FAHY,
Acting Solicitor General,
Department of Justice, Washington, D. C.

MY DEAR MR. FAHY: I have studied the opinion of the Court of Appeals for the District of Columbia in the case of Elizabeth Kerr v. United States, decided June 30, 1941, which was transmitted with your letter of July 8, 1941, and have to advise you that the conclusion reached by the Court of Appeals is in direct conflict with the administrative practice uniformly followed by the Veterans Administration and its predecessor, the Veterans Bureau, since June 7, 1924, the date of enactment of the World War Veterans' Act.

The War Risk Insurance Act did not permit the payment of yearly renewable term insurance except in monthly installments, which installments were based upon a sum certain (face value of policy) with interest allowed at a prescribed rate (3½%) over the period of deferred payments. The World War Veterans' Act, June 7, 1924, provided, however, that, effective as of October 6, 1917, when the estate of an insured became entitled to receive the benefits of yearly renewable term insurance* the amount to be paid should be the "present value of the monthly installments thereafter payable."

All cases which have been adjudicated in favor of estates of insureds under Section 303, World War Veterans' Act, have been settled upon the basis of the present value of installments as of the date the insured's estate became entitled to receive payment, except as hereinafter explained. Moreover, no judgment presented to the Veterans Administration for payment has ever embodied any contrary interpretation.

62 Because of an apparent inequity that this uniform application of the provisions of Section 303, as first enacted, would have caused, in a certain class of cases, the Veterans Bureau proposed an amendment which was enacted March 4, 1925. The administrative interpretation—that the clause in Section 303, making that Section retroactive to October 6, 1917, required the computation of the value of unpaid installments as of the date of death of the insured or the date of death of any other person to whom the installments were being paid or might have been paid—was deemed to permit of no exception, even in those cases in which an

*For example, upon the death of an insured with no beneficiary surviving or, as in the Kerr case, upon the date of the death of a surviving beneficiary.

installment award (embracing an allowance of interest upon installments deferred in payment) had been made prior to the passage of the Act of June 7, 1924. Consequently, the amendment of March 4, 1925, providing—

"* * * there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable, *said value to be computed as of the date of last payment made under any existing award;* * * *." [Italics supplied.]

was proposed, as stated by the Veterans Bureau, for the purpose of avoiding deduction from the amount otherwise payable the interest included in installments previously paid pursuant to the authority of then existing law.

In response to your request for my opinion, I have to advise you that I regard the question here involved as one of considerable importance. The number of cases adjudicated within the past seventeen years upon an administrative construction of the applicable statute, at variance with that now adopted by the Court of Appeals, and the magnitude of the administrative tasks which would be presented by a necessity for reviewing such prior adjudications, if the principle were to be applied to all possible cases, indicate the basis for my opinion. And, of course, the cost to the United States would be considerable.

I regret that I am unable to give specific estimates at this time as to the number of cases and the amount of money involved, but I shall direct a study to determine these matters upon receipt of advice from you that you need such information.

Sincerely yours,

(s) FRANK T. HINES,
Frank T. Hines,
Administrator.

63 Service of a copy of the attached petition for rehearing admitted this 15th day of July 1941.

CAMDEN R. MCATEE,
Attorney for Appellant

64 [File endorsement omitted.]

65 In United States Court of Appeals for the District of Columbia

[Title omitted.]

Appellant's objections to appellee's petition for rehearing

Filed July 18, 1941

May It Please the Court:

For appellant, it is necessary to suggest several material objections to the appellee Petition for Rehearing and exhibited letter

of the Honorable Veterans' Administrator to the Honorable Solicitor General, complaining of a conflict between administrative practice existing since June 7, 1924, and the conclusions of this Court in its opinion of June 30, 1941. (All references hereafter are to pages of printed Appellee Brief.)

1. The letter first says, and the petition reiterates, that the conflict is with the administrative practice uniformly followed since enactment of the World War Veterans Act of June 7, 1924. Section 303 of that Act (p. 16), was repealed (p. 29) on March 4, 1925, when Section 303 (p. 16), here in controversy was substituted to establish a new plan for distribution of insurance proceeds. The inference from both the letter and petition is
66 that an administrative practice applicable to the abandoned 1924 Section and rendered obsolete by its repeal and substitution, is the ground of conflict. This inference is strengthened by references in the next two paragraphs of the letter to the abandoned 1924 Section.

2. The second paragraph notes the departure in the World War Veterans Act from previous continuous payment of monthly installments, and the introduction of a new plan for payment of their present value to the estate of insured, if no beneficiary survivide the insured, or if the surviving beneficiary—as happened in this Kerr case, specifically mentioned in the letter—had died before receiving all the installments due and payable.

The paragraph is unfortunately entirely wrong in its statement of the distribution under the new plan prescribed in Section 303 enacted June 7, 1924, into the World War Veterans Act. The error is that the paragraph actually summarizes the later plan obtained in the amended and substituted section enacted on March 4, 1925. Actually the 1924 enactment (p. 10) provided quite differently and imposed upon the Bureau the interval burden of paying subsequent installments to the living persons entitled thereto until the last person died, and provided only for the commutation of the remaining installments into present value for payment to the estate of the insured.

Parenthetically, under this 1924 section as in effect on and before June 28, 1924, at the death of Eugene Kerr, the designated beneficiary, and until March 4, 1925, the remaining installments
67 became payable to appellant, Elizabeth Kerr, mother of insured, as the only surviving person in the permitted class. If so awarded to her, Mrs. Kerr would have received $10,580 in payments beginning in July 1924 and ending with the last installment in October 1939, being the amount judicially awarded to her on April 4, 1940, now affirmed by this Court, and still entirely unpaid to her by appellee.

Parenthetically again, under both the prior law and new 1924 plan, the Bureau had the continuous burdensome duty of distributing the monthly payments among the persons entitled (p. 31), resulting in absurdly small amounts. Consequently, the Bureau conceived (p. 29) and obtained the substituted plan enacted as Section 303 on March 4, 1925, which is the statute involved and construed in this decision. Under this second substituted plan (p. 16), the commuted present value of installments thereafter payable, where there was no designated beneficiary, or where such beneficiary died before receiving installments payable and applicable, was made payable and available to the estate of the insured for distribution to the persons entitled to share in its proper settlement. Thereby, the Bureau relieved itself of the burden of distributing the installments among the persons entitled, and passed the burden to the estate of the insured.

Returning to the letter paragraph, it is thus apparent the paragraph erroneously states the substance of the substituted Section of March 4, 1925, instead of the substance of the abandoned Section 303 of the World War Veterans Act. Whether inadvertent or not, the error emphasizes the confusion about
68 applicable administrative practice inferable from the first paragraph of the letter. When the statement of the applicable law is erroneous and conflicting, alleged resulting conflict of the decision cannot be pinned down to any administrative practice.

3. In its third paragraph, the letter suggests certain exceptional cases. These must have arisen, as contemplated by the writer of the letter, under Section 303 enacted March 4, 1925, summarized in the preceding paragraph as those of the abandoned Section 303 of the World War Veterans Act.

4. The fourth paragraph says the amended or substituted Section 303 was proposed by the Bureau and was enacted March 4, 1925, in such exceptional cases, to avoid deduction of the interest included in previously paid installments from the amount otherwise payable; all notwithstanding that the second paragraph of the letter summarizes Section 303 enacted on June 7, 1924, as containing the provisions of this amended or substituted section. The letter certainly presents its own conflicts.

This reason for proposing the amended and substituted section is new in this case, and, being always available and known to appellee, is no ground for a new trial. The appellee posed, before this Court (p. 7), that the new section was entirely directed against an installment award to the estate of an insured.
69 But before Congress, the amendment was posed in a letter of General Hines as intended to obtain immediate discharge

of obligations and obtain early closing of estates (pp. 30–31), and was so accepted (p. 31) in the Committee report.

The petition for rehearing ignores the new reason for proposal of the substituted Section given by the Administrator, in his letter. The petition says the new section was solely prepared and recommended to avoid retroactive application to installment awards in course of payment on June 7, 1924. Because of the real conflict between the honorable Administrator and appellee attorneys as to the reason for proposing and obtaining the substituted section, the plea in the petition that there has been legislative adoption of an administrative construction lacks all substance.

This case is, as the opinion suggests, an exceptional case. Upon decision by this Court in December 1939, that the insurance contract was in effect at the death of insured on November 8, 1919, the case might have been removed from judicial controversy by administrative adjustment. If so, the beneficiary award of $3,220 would have been made and paid at a date subsequent to the maturity of the insurance contract and after the accrual of all payable monthly installments in October 1939; the consequent award to the estate would have been $10,580, as all the installments payable after death of the beneficiary had matured, and there were no future installments for commutation into a present
70 value. This is the succinct administrative application of Section 303 of March 4, 1925, to its facts, where no monthly installments were ever paid.

Not being so removed from judicial controversy, separate judgment awards in said amounts, in favor, respectively, of the estates of the beneficiary and insured, were entered on April 4, 1940, and certified to the Administration for payment. There was never any objection or contention that the beneficiary award was not payable as so adjudged. Of itself judicially, or by award administratively to effect its payment, it was or became an existing award, and so was sufficient under Section 303 as amended to determine the correctness of the judicial award of $10,580 to the estate of insured. The subsequent Administration payment in April 1941 of the beneficiary award certainly established the propriety of payment of the judicial award of $10,580 to the estate of insured.

This Court, by excellent reasoning, has reached the same conclusion that this simple application of the statutory provisions to the facts so clearly reveals, and has decided the judicial award of $10,580 was and is the correct determination of the amount of the insurance proceeds due and payable to the estate of insured under the same statutory provisions.

4, 5. The fourth and fifth paragraphs of the letter intimate that prior administrative decisions may have to be reexamined

under the decision at considerable cost. If the Veterans
71 Administration had administratively simplified this exceptional case, or had given due effect to the judicial awards, as above suggested, or, after paying the beneficiary award, had paid the award to the estate of insured, the responsibility now complained of might not have been assumed.

Appellant submits these objections clearly establish no sufficient ground for rehearing has been presented, and that the petition should be overruled.

Respectfully,

(s) CAMDEN R. MCATEE
Attorney for Appellant.

Service of a copy of the foregoing Appellant Objections to Appellee Petition for Rehearing admitted this 18th day of July 1941,

(s) KEITH L. SEEGMILLER,
Attorney for Appellee.

72 In United States Court of Appeals for the District of Columbia

[Title omitted.]

Order denying petition for rehearing

Aug. 11, 1941

On consideration of appellee's petition for rehearing, filed herein July 15, 1941,

It is ordered that the petition be, and it is hereby, denied.

73 In United States Court of Appeals for the District of Columbia

[File endorsement omitted.]

Designation of record

Filed Oct. 23, 1941

The Clerk will please prepare a certified transcript of record and proceedings in the above entitled cases and include therein the following:

1. Agreed statement of the case on appeal, including:
(a) Judgment pursuant to mandate entered April 5, 1940.
(b) Motion for correction and substitution of judgment in favor of plaintiff, filed June 21, 1940.

(c) Stipulation filed January 9, 1941, nunc pro tunc as of June 21, 1940.
(d) Affidavit of Allen Crenshaw.
(e) Counter-affidavit of Camden R. McAtee.
(f) Plaintiff's motion for an award of interest.
(g) Reference to Veteran Commissioner.
(h) Report of Veteran Commissioner.
(i) Orders appealed from (order correcting judgment, rendered April 4, 1940, and overruling motion for award of interest), entered January 9, 1941.
(j) Notice of appeal filed January 23, 1941.
(k) Order as to appeal undertaking, including appended memorandum.
(l) Points relied upon by the appellant.
74 2. Order of approval of agreed case, filed March 4, 1941.
3. Approval of parties (to the agreed case).
4. Order extending time to file and docket action, filed March 4, 1941.
5. Certificate of Clerk of the District Court.
6. Opinion of the United States Court of Appeals for the District of Columbia and judgment of that court.
7. Petition for rehearing.
8. Objections to petition for rehearing.
9. Order denying petition for rehearing.
10. This designation.
11. Clerk's certificate.

CHARLES FAHY,
Acting Solicitor General.

Service of the above designation of record accepted October 20, 1941.

CAMDEN R. MCATEE,
Counsel for appellant.

75 [Clerk's certificate to foregoing transcript omitted in printing.]

U. S. GOVERNMENT PRINTING OFFICE: 1941

Supreme Court of the United States

Order allowing certiorari

Filed December 15, 1941

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1942

FILE COPY

Office - Supreme Court, U. S.
FILED
NOV 10 1941
CHARLES ELMORE CROPLEY
CLERK

No. 738

In the Supreme Court of the United States

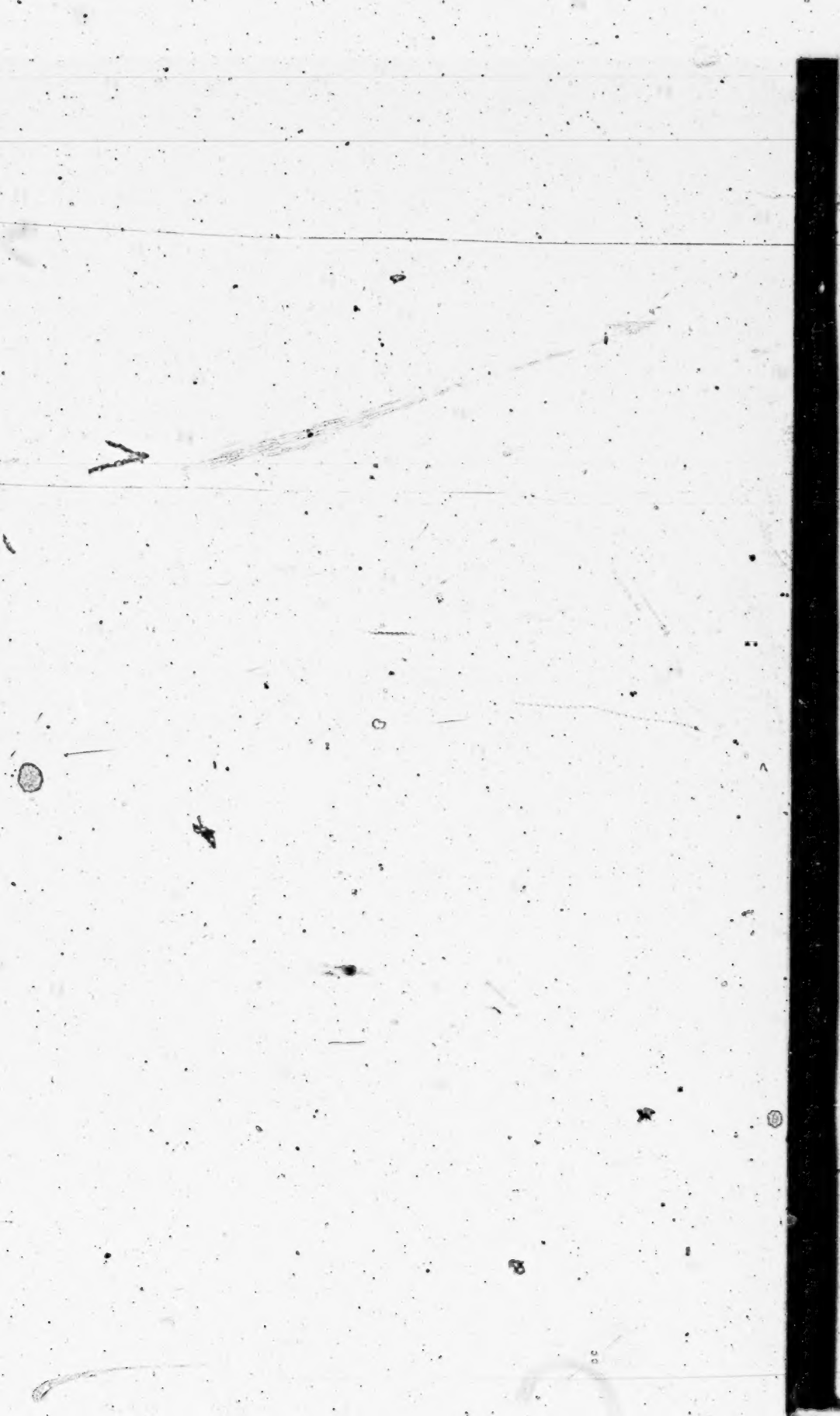
OCTOBER TERM, 1941

THE UNITED STATES OF AMERICA, PETITIONER

v.

ELIZABETH KERR, ADMINISTRATRIX OF THE ESTATE OF JOSEPH KELLY KERR, DECEASED

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA



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In the Supreme Court of the United States

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No. 738

THE UNITED STATES OF AMERICA, PETITIONER

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia in the above entitled case.

OPINIONS BELOW

The District Court of the United States for the District of Columbia rendered no opinion. Its judgment, however, was in accordance with the report of a commissioner of that court, to whom the case had been referred (R. 9). This report appears at R. 10–30. The opinion of the Court of Appeals for the District of Columbia (R. 36–38) is reported in 122 F. (2d) 638.

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia was entered June 30, 1941 (R. 39). A petition for

rehearing, filed July 15, 1941 (R. 39–40), was denied August 11, 1941 (R. 46). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Section 303 of the World War Veterans' Act, 1924, as amended provides that if the designated beneficiary of a yearly renewable term insurance contract issued to a veteran by the United States does not survive the insured or survives the insured and dies prior to receiving all of the installments due under the insurance policy, there shall be paid to the estate of the insured the "present value" of the monthly installments thereafter payable. In the present case the designated beneficiary survived the insured but died before all the installments under the policy were due. The question is whether the obligation of the United States to the insured's estate is to be computed upon the basis of the "present value" of the installments due at the time that the obligation arises or whether, when payment to the estate is delayed, the obligation is to be computed upon the present value of the installments as of the date of payment.

STATUTES INVOLVED

Section 303 of the World War Veterans' Act of June 7, 1924, 43 Stat. 625, as amended by the Act of March 4, 1925, 43 Stat. 1310 (38 U. S. C., Sec. 514), provides in part as follows:

> If no person within the permitted class be designated as beneficiary for yearly renewable term insurance by the insured either in his lifetime or by his last will and testament or if the designated beneficiary does not survive the insured or survives the insured and dies prior to receiving all of the two hundred and forty installments or all such as are payable and applicable, there shall be paid to the estate of the insured the present

> value of the monthly installments thereafter payable, said value to be computed as of date of last payment made under any existing award: * * *. This section shall be deemed to be in effect as of October 6, 1917.

Prior to its amendment in 1925, these provisions of Section 303 provided:

> If no person within the permitted class of beneficiaries survive the insured, or if before the completion of payments the beneficiary or beneficiaries shall die and there be no surviving person within said permitted class, then there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable under the provisions of this title: * * *. This section shall be deemed to be in effect as of October 6, 1917.

The original and the amended section are quoted in full in the Appendix (pp. 12–13). The other relevant statutory provisions, as well as the pertinent regulations, also appear in the Appendix (pp. 11–12, 13–14).

STATEMENT

This case was heard in the Court of Appeals for the District of Columbia on an agreed statement (R. 1–34) and, accordingly, the facts are undisputed.

The suit is based upon a $10,000 contract of yearly renewable term insurance issued by the United States to Joseph Kelly Kerr. The insured died on November 8, 1919 (R. 1). The insured's father, Eugene Kerr, who had been designated as beneficiary of the insurance, died on June 24, 1924 (R. 1).

A claim for benefits under the policy, filed in the Veterans' Bureau, was denied by the Director on March 6, 1920, upon the ground that, prior to the death of the insured, the policy had lapsed for nonpayment of premiums (R. 25; *Kerr* v. *United States*, 108 F. (2d) 585, 586 (App. D. C.)). Upon the

basis of this disagreement, suit was instituted in the United States District Court for the District of Columbia on November 6, 1925 (R. 25), under the authority of Section 19 of the World War Veterans' Act (Appendix, pp. 13–14). The District Court ruled in favor of the Government, but the Court of Appeals reversed, holding that the insurance was in force. *Kerr* v. *United States, supra.*

Upon remand to the District Court, the present controversy arose. It relates entirely to the computation of the sum presently payable to the respondent as administratrix of the estate of the insured.

The contract, which includes the provisions of the applicable statutes and regulations (Appendix, p. 11; cf. *White* v. *United States*, 270 U. S. 175, 180), provided that there should be paid to the beneficiary during his lifetime $57.50 per month for a maximum of 240 months and that, if he died before receiving all of the installments, the present value of the remaining installments should be paid to the insured's estate (Appendix, pp. 11–13).

The District Court, in its judgment, awarded to the beneficiary's estate the sum of $3,220, which represented the 56 monthly installments, accruing between November 8, 1919, the date of the insured's death, and June 24, 1924, the date of the beneficiary's death (R. 31). This portion of the judgment is not in dispute and has been paid.

With respect to the benefits payable to the estate of the insured, the District Court first entered judgment awarding that estate $10,580, the aggregate of the 184 remaining installments of $57.50 per month (R. 2). The Government moved to correct this portion of the judgment on the ground that, under Section 303 of the World War Veterans' Act as amended (supra, pp. 2–3), only the present value of the 184 installments as of June 24, 1924, the date of the beneficiary's death, was payable. It was stipulated that the present value of the 184 installments on June 24, 1924, was $8,234 (R. 4). The court referred the matter to a commissioner for study and report

(R. 9–10). In a comprehensive report (R. 10–30), the commissioner sustained the Government's contention. The District Court accepted the views of the commissioner and modified its judgment accordingly (R. 30–31). The Court of Appeals, however, reversed this judgment, holding that the respondent was entitled to recover $10,580, the amount originally awarded by the District Court (R. 35–38).

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

(1) In holding that Section 303 of the World War Veterans' Act, 1924, as amended, should not be applied literally to the facts of this case because of delay on the part of the Government in paying the present value of 184 installments of yearly renewable term insurance due and payable to the estate of the insured on June 24, 1924.

(2) In holding that the amendment of March 4, 1925, to Section 303 provided a guide to the computation of the Government's liability in this case which would permit the fixing of that liability at $10,580.

(3) In holding that the liability of the United States due and payable in 1924 in the stipulated sum of $8,234 has now become a liability of $10,580.

(4) In allowing, in effect, interest upon a past due obligation of the Government under a contract of yearly renewable term insurance.

(5) In overturning a consistent and long-established administrative practice not clearly erroneous.

(6) In reversing the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

1. The decision of the Court of Appeals is directly opposed to the consistent and long-established administrative practice of the Veterans' Administration and its predecessor, the Veterans' Bureau. In a letter dated July 14, 1941, from the Administrator of Veterans' Affairs to the Acting Solicitor General,

contained in the record (R. 41–42), it is stated that "All cases which have been adjudicated in favor of estates of insureds under Section 303, World War Veterans' Act, have been settled upon the basis of the present value of installments as of the date the insured's estate became entitled to receive payment, except as hereinafter explained.[1] Moreover, no judgment presented to the Veterans' Administration for payment has ever embodied any contrary interpretation."

2. While the amount involved in the instant case is in itself relatively small, the decision will have burdensome financial and administrative consequences if unreversed. The Administrator of Veterans' Affairs, in his letter of July 14, 1941, states (R. 42): "I regard the question here involved as one of considerable importance. The number of cases adjudicated within the past seventeen years upon an administrative construction of the applicable statute, at variance with that now adopted by the Court of Appeals, and the magnitude of the administrative tasks which would be presented by a necessity for reviewing such prior adjudications, if the principle were to be applied to all possible cases, indicate the basis for my opinion. And, of course, the cost to the United States would be considerable."

In a supplemental communication dated November 6, 1941 (Appendix, pp. 14–15), the Administrator states that more than 58,000 cases have been adjudicated under Section 303 in accordance with the administrative interpretation.[2]

---

[1] This exception, as is apparent from the Administrator's letter (R. 42), is the result of amendatory legislation obviously inapplicable to the instant case. The Court of Appeals recognized this inapplicability, although it considered that the amendatory legislation provided a "guide for computation in this case" (R. 38).

[2] Section 303 applies only to yearly renewable term insurance. Section 301, World War Veterans Act, as amended (45 Stat. 968; 38 U. S. C., Sec. 512), contains language substantially similar to that embodied in Section 303 but relating to United States Government life (converted) insurance. If the decision of the Court of Appeals is construed as applicable to Section 301 as well as to Section 303, it will affect the method of computing liability in an additional number of cases.

3. We believe the decision of the court below to be manifestly erroneous in its interpretation of Section 303.

(a) Section 303 became a part of the insurance contract upon the date of its enactment on June 7, 1924 (Bulletin No. 1, Appendix, p. 11; *Singleton* v. *Check*, 284 U. S. 493; *White* v. *United States*, 270 U. S. 175), and after that date the contract, as so modified, provided a single, exclusive method of computing the amount of death benefits due the estate of an insured under a contract of yearly renewable term insurance, i. e., the determination of the "present value" of the installments unpaid as of the date of the death of the beneficiary, where, as here, the beneficiary survived the insured and died before receiving all of the 240 installments. It is stipulated that in the present case this method of computation would have yielded $8,234 (R. 4).

The Court of Appeals, however, concluded that the estate of the insured should be paid $10,580, an amount exactly corresponding to the sum of 184 installments of $57.50 each (R. 2), which the court stated "is * * * the present value of the remaining installments" at the time of the judgment (R. 38). It so held because it considered the intention of Congress, in the enactment of Section 303, to have been to correlate the method of computing the obligation of the United States to the estate of an insured with the date of actual payment of the insurance benefits.

We submit, however, that the language of Section 303 makes clear the purpose of Congress to correlate the method of computation of the Government's liability to the estate of an insured with the due date of the obligation, and that Congress was not concerned in that section with the date of actual payment. Congress could not have been unaware of the fact that there would necessarily be delay in actual payment in many, if not most, cases, including all of the cases, such as the present one, where the claim is denied by the Administrator of Veterans' Affairs and suit is instituted against the United States under authority of Section 19 of the World War

Veterans' Act, 1924 (Appendix, pp. 13–14). Nevertheless, Congress made no provision in Section 19, or in Section 303, or elsewhere in the World War Veterans' Act to penalize the United States or to compensate claimants because of this unavoidable delay.

(b) The Court of Appeals regarded the amendment of 1925 [3] as "affording a guide for computation in this case" (R. 38), although it recognized that the amendment is not applicable in terms (R. 38), and that it was enacted to resolve problems in a particular type of case unlike the present one (R. 54). The cases to which the amendment was intended to apply were those where awards had been made prior to 1924. The installments which had been paid under such awards had reflected an allowance of interest upon the amounts for which the due dates had been deferred as a result of the monthly installment method of settlement. Under the contract provisions and the administrative practice, interest had always been allowed to the due date or due dates of the Government's obligation (Bulletin No. 1, Appendix, p. 11) but never thereafter. Hence, the controlling factor in determining the liability of the United States to the estate of the insured or any other claimant was the due date of the Government's obligation. Since the 1924 Act provided for the estate of an insured a single immediate due date for all of the unpaid installments of insurance in lieu of the numerous deferred due dates involved in the monthly installment plan of payment theretofore in effect, and since the Act was specifically made retroactive to October 6, 1917, thus providing in certain cases a due date which had already passed, the result of the Act would have been to deprive estate-beneficiaries of awards of interest theretofore properly allowed to them in accordance with the law as it was at the time the awards were made. The Veterans' Bureau believed that while it was not inequitable to change the due date of an obligation prospec-

[3] Reference is to the clause (*supra*, p. 3) reading: "said value [present value] to be computed as of date of last payment under any existing award."

tively and effect a corresponding elimination of interest, it was highly inequitable to eliminate a portion of a matured liability by the technical expedient of legislation making a retroactive change in the due date. Accordingly it sponsored the amendment of 1925 (R. 41) changing the effective date of the computation of the value of the unpaid installments in cases where liability had already matured to the "date of last payment made under any existing award." The adoption of this amendment, limited as it was to those cases in which an award had actually been made and was in process of payment when the Act of 1924 was passed, clearly indicates an acceptance by Congress of the administrative interpretation of the 1924 Act as applying to all other cases.

(c) While the Court of Appeals did not expressly purport to base its decision upon an allowance of interest on the $8,234 which admittedly became due and payable to the estate of the insured on June 24, 1924, and which concededly represented the whole of the Government's liability on that date (R. 3), the conclusion is inescapable that the decision has precisely this effect.

It is a well-established principle enunciated by this Court in many cases that "the United States will not be required to pay interest except where the liability is imposed by statute or assumed by contract." *United States* v. *Worley*, 281 U. S. 339, 341. In the *Worley* case this Court construed the provisions of the War Risk Insurance Act of October 6, 1917, and the World War Veterans' Act and held (pp. 343–344):

> The Act does not provide for the payment of any interest on past due installments. It has been uniformly construed by the Bureau not to allow any. There is nothing in the conduct of the United States in respect of life and disability insurance from which an agreement on its part to pay interest may reasonably be implied.

While this holding was not directed expressly to payments to the estate of an insured under Section 303, that section was

specifically mentioned in the opinion (p. 343). The World War Veterans' Act makes no provision for interest to the estate of an insured where payment of the insurance as provided in Section 303 has been delayed, nor does it recite any circumstances indicating that Congress intended to allow to claimants under this section a benefit which it was held in the *Worley* case had not been allowed to other claimants.

(d) In any event the administrative construction of the legislation, which the court below ignored in its opinion and with which the decision is in direct conflict, is not shown to have been clearly erroneous and should, therefore, have been given effect. *United States* v. *Jackson*, 280 U. S. 183, 193; *United States* v. *Madigan*, 300 U. S. 500, 505. This is especially true since the Veterans' Administration drafted, in part at least (R. 42), the legislation in question. *United States* v. *Moore*, 95 U. S. 760, 763; *Norwegian Nitrogen Co.* v. *United States*, 288 U. S. 294, 316.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

CHARLES FAHY,
Solicitor General.

NOVEMBER 1941.

APPENDIX

Bulletin No. 1, Bureau of War Risk Insurance, Treasury Department, promulgated by the Director on October 15, 1917, reads in part as follows:

THE UNITED STATES OF AMERICA, TREASURY DEPARTMENT, BUREAU OF WAR RISK INSURANCE

Under the authority granted by Congress in an act amending "An Act entitled 'An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department,' approved September 2, 1914, and for other purposes," approved October 6, 1917, and subject in all respects to the provisions of such act, or any amendments thereto, and of all regulations thereunder now in force or hereafter adopted, all of which, together with this policy, the application therefor, and the terms and conditions published under authority of the act, shall constitute the contract:

Hereby insures from and after the ..... day of ....., 19..; ....., conditioned upon the payment of premiums as herein provided, for the principal amount of $5,000 converted into monthly installments of $28.75 (the equivalent, when paid for 240 months, of the sum insured, on the basis of interest at the rate of 3½ percent per annum) payable—

To the insured, if he/she, while this insurance is in force, shall become totally and permanently disabled commencing with such disability as established by the award of the director of the bureau and continuing during such disability; and

To the beneficiary or beneficiaries hereinafter designated, commencing upon the death of the insured, while the insurance is in force, and (except as otherwise provided) continuing for 240 months if no installments have been paid for total and permanent disability or if any such installments have been paid, then for a number of months sufficient to make 240 in all: * * *.

Section 303 of the World War Veterans' Act of June 7, 1924 (43 Stat. 625), provided:

If no person within the permitted class of beneficiaries survive the insured, or if before the completion of payments the beneficiary or beneficiaries shall die and there be no surviving person within said permitted class, then there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable under the provisions of this title: *Provided,* That in cases where the estate of the insured would escheat under the laws of the place of his residence the insurance shall not be paid to the estate of the insured, but shall escheat to the United States and shall be credited to the United States Government life-insurance fund or the military and naval insurance appropriation, as may be proper. This section shall be deemed to be in effect as of October 6, 1917.

Section 303 of the World War Veterans' Act, as amended March 4, 1925 (sec. 14, 43 Stat. 1310; 38 U. S. C., Sec. 514), provided—

If no person within the permitted class be designated as beneficiary for yearly renewable term insurance by the insured either in his lifetime or by his last will and testament or if the designated beneficiary does not survive the insured or survives the insured and dies prior to receiving all of the two hundred and forty installments or all such as are payable and applicable, there shall be paid to the estate of the insured the present value of the

monthly installments thereafter payable, said value to be computed as of date of last payment made under any existing award: *Provided*, That all awards of yearly renewable term insurance which are in course of payment on the date of the approval of this Act shall continue until the death of the person receiving such payments, or until he forfeits same under the provisions of this Act. When any person to whom such insurance is now awarded dies or forfeits his rights to such insurance then there shall be paid to the estate of the insured the present value of the remaining unpaid monthly installments of the insurance so awarded to such person: *Provided further*, That no award of yearly renewable term insurance which has been made to the estate of a last surviving beneficiary shall be affected by this amendment: *Provided further*, That in cases when the estate of an insured would escheat under the laws of the place of his residence the insurance shall not be paid to the estate but shall escheat to the United States and be credited to the military and naval insurance appropriation. This section shall be deemed to be in effect as of October 6, 1917.

Section 19 of the World War Veterans' Act of June 7, 1924, as amended (38 U. S. C., Sec. 445), provides in pertinent part:

> In the event of disagreement as to claim, including claim for refund of premiums, under a contract of insurance between the Veterans' Administration and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the district court of the United States for the District of Columbia or in the district court of the United States in and for the district in which such persons or any one of them resides, and jurisdiction is hereby conferred upon such courts to hear and determine all such controversies. * * * In all cases where the Veterans' Ad-

ministration acknowledges the indebtedness of the United States upon any such contract of insurance and there is a dispute as to the person or persons entitled to payment, a suit in the nature of a bill of interpleader may be brought by the Veterans' Administration in the name of the United States against all persons having or claiming to have any interest in such insurance * * *.

No suit on yearly renewable term insurance shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made or within one year after July 3, 1930, whichever is the later date, * * *.

The number of cases in which one-sum payments have been made to the estates of insureds under the provisions of Section 303, World War Veterans' Act, is shown in the following letter from the Administrator of Veterans' Affairs, and the table attached to that letter:

VETERANS' ADMINISTRATION,
Washington, November 6, 1941.

Honorable CHARLES FAHY,
Acting Solicitor General,
Department of Justice,
Washington, D. C.

MY DEAR MR. SOLICITOR GENERAL: Supplementing my letter of July 14, 1941, concerning the opinion of the Court of Appeals of the District of Columbia, in the case of *Elizabeth Kerr v. United State* decided June 30, 1941, and transmitted with your letter of July 8, 1941, based upon the claim of Joseph Kelly Kerr, XC-76,422, I am now able to inform you that 58,963 cases have been adjudicated under Section 303 of the World War Veterans' Act of 1924, as amended, in accordance with the administrative practice stated in my letter.

There is attached a brief table, prepared in the Beneficiary Statistics Division of the Office of Budget and Statistics of this Administration, which will give you an idea of the number of

cases so adjudicated, beginning in 1925, with totals for the five-year intervals in 1930 and 1935 and the annual totals thereafter from 1936 to 1941, inclusive.

Very truly yours,

[s] FRANK T. HINES,
Frank T. Hines,
Administrator.

Encl.

Term insurance—Lump-sum payments

Fiscal year	Total to date	Annual increases	Fiscal year	Total to date	Annual increases
1925	96		1938	51,292	4,616
1930	19,058		1939	56,452	5,160
1935	38,742		1940	57,993	1,541
1936	42,398	3,656	1941	58,963	970
1937	46,676	4,278			

Number of death cases on which installments of Term Insurance are being paid, 11,453.

U. S. GOVERNMENT PRINTING OFFICE: 1941

FILE COPY

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FILED
MAR 23 1942
CHARLES ELMORE CROPLEY
CLERK

No. 738

In the Supreme Court of the United States

OCTOBER TERM, 1941

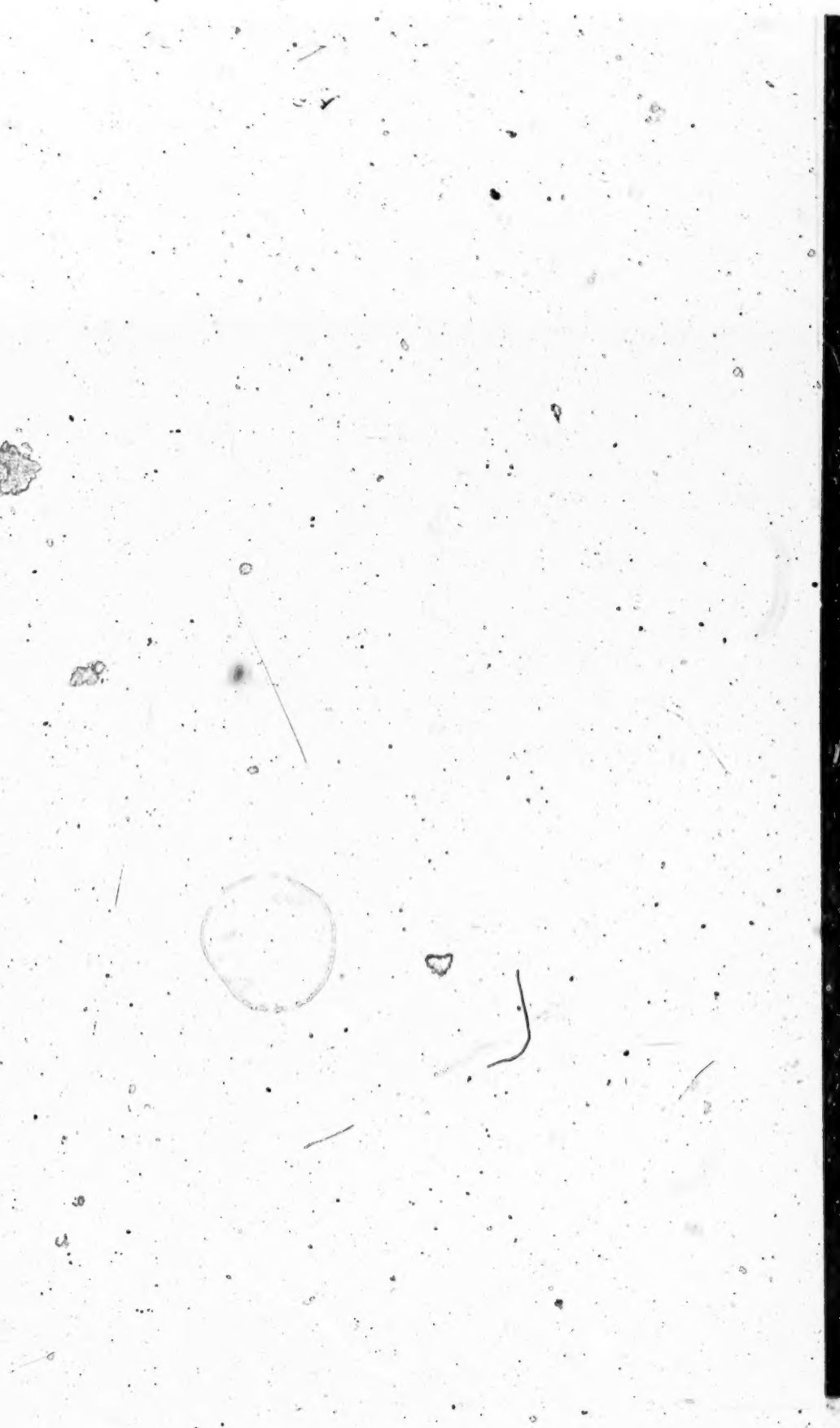
THE UNITED STATES OF AMERICA, PETITIONER

v.

CITIZENS' LOAN & TRUST COMPANY, ADMINISTRATOR DE BONIS NON OF THE ESTATE OF JOSEPH KELLY KERR, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES



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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 738

THE UNITED STATES OF AMERICA, PETITIONER

v.

CITIZENS' LOAN & TRUST COMPANY, ADMINISTRATOR DE BONIS NON OF THE ESTATE OF JOSEPH KELLY KERR, DECEASED [1]

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The District Court of the United States for the District of Columbia rendered no opinion. Its judgment (R. 30–31), however, was in accordance with the report of a commissioner of that court (R. 10–30), to whom the case had been referred

[1] Substituted as respondent for Elizabeth Kerr, Administratrix, who died subsequent to the judgment of the Court of Appeals.

(R. 9–10). The opinion of the Court of Appeals for the District of Columbia (R. 36–38) is reported in 122 F. (2d) 638.

JURISDICTION

The judgment of the Court of Appeals was entered June 30, 1941 (R. 39). A petition for rehearing (R. 39–40) was denied August 11, 1941 (R. 46). The petition for a writ of certiorari was filed November 10, 1941, and was granted December 15, 1941 (R. 48). The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, under Section 303, World War Veterans' Act, 1924, as amended, the amount of the Government's obligation to the estate of an insured under a contract of yearly renewable term insurance is increased by delay in its payment.

STATUTES INVOLVED

Section 303 of the World War Veterans' Act of June 7, 1924, c. 320, 43 Stat. 607, 625, as amended by Section 14 of the Act of March 4, 1925, c. 553, 43 Stat. 1302, 1310 (38 U. S. C. 514), provides, in pertinent part, as follows:

> SEC. 14. Section 303 of the World War Veterans' Act, 1924, approved June 7, 1924, is hereby amended to read as follows:
>
> "SEC. 303. If no person within the permitted class be designated as beneficiary for

> yearly renewable term insurance by the insured either in his lifetime or by his last will and testament or if the designated beneficiary does not survive the insured or survives the insured and dies prior to receiving all of the two hundred and forty installments or all such as are payable and applicable, there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable, said value to be computed as of date of last payment made under any existing award: * * *.

The complete section, as amended and as originally enacted, other relevant statutory provisions, and a portion of Treasury Bulletin No. 1, containing the form of the contract of yearly renewable term insurance, appear in the Appendix, *infra*, pp. 21–28.

STATEMENT

The facts are not in dispute.[2] Yearly renewable term insurance for $10,000 was issued to Joseph Kelly Kerr, who died on November 8, 1919. The designated beneficiary was Eugene Kerr (R. 1). A claim for the policy's proceeds was denied by the Bureau of War Risk Insurance on March 6, 1920, upon the ground that the policy was not in effect when the insured died (R. 25). The designated beneficiary died on June 24, 1924 (R. 1).

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[2] The case was heard in the Court of Appeals on an agreed statement of the case under Rule 76 of the Federal Rules of Civil Procedure (R. 1–34).

Suit on the policy was instituted on November 6, 1925 (R. 25), by Elizabeth Kerr.[3] The District Court held that the insurance was not in force when the insured died, and entered judgment for the United States on March 27, 1939 (R. 2). The Court of Appeals for the District of Columbia reversed on December 4, 1939. (*Kerr* v. *United States*, 108 F. (2d) 585.)

The present controversy arose in the District Court in connection with the entry of judgment pursuant to the reversal by the Court of Appeals. It relates solely to the proper interpretation of Section 303 of the World War Veterans' Act of June 7, 1924, as amended March 4, 1925, in the determination of the amount payable to the estate of the insured, Joseph Kelly Kerr.[4] The judgment

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[3] The suit was brought by Elizabeth Kerr individually, but by a number of amendments to the complaint, not incorporated in the present record, she was made party-plaintiff in the capacities of administratrix of the estate of the insured, Joseph Kelly Kerr, and of the estate of the beneficiary, Eugene Kerr (R. 1).

[4] The insured's $10,000 contract originally provided for the payment of 240 monthly installments of $57.50 each. (Bulletin No. 1, Appendix, *infra*, pp. 23–24.) Section 303 altered this method of payment only with respect to benefits payable to the estate of an insured. Accordingly, Eugene Kerr, the designated beneficiary, became entitled to receive $57.50 on November 8, 1919, the date of the insured's death, and the same amount on the corresponding day of each succeeding month until his death on June 24, 1924. Thus, 56 installments of $57.50 each, aggregating $3,220, accrued in favor of Eugene Kerr and were properly awarded to his estate in the judgment of the District Court (R. 2, 30, 31). This portion of the judgment has been paid and is not in dispute.

of the District Court first awarded to this estate the amount of $10,580[5] (R. 2). The Government moved to correct the judgment by substituting the amount of $8,234[6] and by including a set-off in the amount of $6.50 for an unpaid premium for the month in which the insured died (R. 3–4). After reference of the matter to a commissioner (R. 9–10), who recommended that the Government's motion be granted (R. 30), the District Court amended the judgment by awarding $8,234, less $6.50, for a net recovery of $8,227.50 (R. 30–31).[7]

The Court of Appeals reversed, holding that $10,580 was payable to the estate of the insured (R. 36–38). It regarded as decisive the fact that the Government's liability had not been discharged earlier.

Stating that the present case "appears to be another instance of that frequently recurring situation in the law where the legislators had certain specific problems in mind but not this one when they passed an amendment" (R. 37), the court

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[5] $10,580 is the sum of 184 installments of $57.50 each. The 240 installments originally provided by the insured's contract would be reduced to 184 upon a deduction of the 56 installments which accrued in favor of the beneficiary during his lifetime.

[6] $8,234 is the present value of 184 monthly installments of $57.50 under a contract of yearly renewable term insurance. (R. 29; see footnote 10, *infra*, p. 11.)

[7] The deduction of the unpaid premium is not in dispute. Accordingly, the amount referred to hereinafter as admitted by the Government to be payable will be stated as $8,234.

bases its decision upon the "apparent rationales of the method of computation" prescribed by Congress in Section 303 of the Act of June 7, 1924, and the amendment of March 4, 1925 (R. 37).

The court points out that, prior to June 7, 1924, yearly renewable term insurance was paid to the estate of an insured in monthly installments, and reasons that when, on that date, Congress provided for payment in one sum, the amount was "set at the present value of the instalments rather than the total of what the instalments would be * * * because the recipient immediately obtained the full use of the money" (R. 37).

The court also points out that the 1925 amendment, in adding the clause "said value to be computed as of date of last payment made under any existing award", "was passed undoubtedly to resolve problems like that of the Cody case" (R. 37), in which the 1924 Act had taken away from the estate of an insured the benefit of interest embodied in the installments already paid.*

* The opinion states concerning the Cody case (R. 36): "At one time the government met such an obligation [to the estate of an insured] by the continuance of the monthly payments. The statute was changed on June 7, 1924, retroactive to October 6, 1917, authorizing a single lump sum payment. The amount of this single payment was figured at the present value of the remaining instalments.

"Under this state of the law the Veterans' Bureau was presented with the Cody case. Cody became permanently disabled on November 1, 1918. He received monthly benefits until his death on June 5, 1922. His executor received an award for instalment payments till October 31, 1938. These

The court apparently reasons that since Congress had thus manifested an intention to allow the interest embodied in installments actually awarded, an intention also to allow installment-interest in cases where the one sum payment provided by Section 303 had been delayed; should be regarded as implied.[9] Therefore, while recognizing that "here there was no last payment under an existing award" within the meaning of the 1925 amendment (R. 38), the Court of Appeals nevertheless concludes (R. 38):

> While the statute makes its express statement in terms of the positive in a situation where there is a last payment, it also affords the guide for computation in this case.

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were paid until June 7, 1924, the date of the lump sum statute. Under that statute it was determined that the value of the lump sum payment was to be figured as of the date of Cody's death. That amount was ascertained and then the amount of the instalments already paid was deducted.

"Then the Veterans' Bureau sponsored an amendment which became law on March 4, 1925, providing that the present value of the remaining instalments should be figured from the time of the last payment under any existing award. The Cody case was redetermined in accordance with this statute."

[9] The opinion may be construed as reflecting the view (R. 37) that the problem of the Cody case, resolved by the 1925 amendment, arose from the fact that the one sum payment, i. e., the present value of the installments unpaid on the date of the death of the insured, had been delayed. If this was the court's view, it was obviously erroneous, we submit. See Discussion, *infra*, pp. 12–14, and footnote 11, *infra*, pp. 12–13.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

(1) In holding that Section 303 of the World War Veterans' Act, 1924, as amended, should not be applied literally to the facts of this case because of delay on the part of the Government in paying the present value of 184 installments of yearly renewable term insurance due and payable to the estate of the insured as of June 24, 1924.

(2) In holding that the amendment of March 4, 1925, to Section 303, provided a guide to the computation of the Government's liability in this case which would permit the fixing of that liability at $10,580.

(3) In holding that the liability of the United States due and payable as of 1924 in the sum of $8,234 has now become a liability of $10,580.

(4) In allowing, in effect, interest upon a past due obligation of the Government under a contract of yearly renewable term insurance.

(5) In overturning a consistent and long-established administrative practice not clearly erroneous.

(6) In reversing the judgment of the District Court.

SUMMARY OF ARGUMENT

I. Delay in payment does not increase the obligation of the United States to the estate of an insured under Section 303. That section contains no express provision for such an increase and none exists elsewhere.

The court below erroneously assumes that the "rationales of the method of computation in the 1924 and 1925 amendments" justify its conclusion that an obligation of $8,234 as of June 1924, has become an obligation of $10,580.

Section 303, as worded in the Act of 1924, prescribed payment to the estate of the insured of the "present value" of the installments unpaid, rather than the installments themselves. Since interest upon the amounts deferred in payment had been allowed when the principal obligation of the United States had been converted into monthly installments, the installment interest was, of course, eliminated when the unpaid installments were reconverted into one sum.

The 1925 amendment was enacted for the limited purpose of avoiding a retroactive withdrawal under the 1924 Act of the interest embodied in installments previously paid.

Neither the Act of 1924, nor the amendment of 1925, indicates in any respect an intention to allow interest upon a past due obligation of the United States because of delay in its payment, and the fact that the 1925 amendment made a single exception to the 1924 Act in cases in which installment payments had been made to an estate prior to 1924, invokes the presumption that Congress did not intend an exception in cases like the present.

II. The decision of the court below allows interest upon a past due obligation of the United States,

contrary to *United States* v. *Worley*, 281 U. S. 339.

III. The decision of the court below is opposed to a consistent, long-continued administrative construction embodied in the adjudication of more than 50,000 cases. Cogent reasons are required for disregarding an administrative construction under such circumstances, and none is here shown.

ARGUMENT

I

THERE IS NO LEGISLATIVE AUTHORITY FOR INCREASING THE AMOUNT PAYABLE UNDER SECTION 303, AS AMENDED, BECAUSE OF DELAY IN PAYMENT

Contracts of yearly renewable term insurance were authorized by Section 400 War Risk Insurance Act of October 6, 1917. (Appendix, *infra*, p. 21.) The terms and conditions of the contracts were embodied in Bulletin No. 1, Bureau of War Risk Insurance (Appendix, *infra*, pp. 23–24), issued October 15, 1917, pursuant to Section 402, War Risk Insurance Act (Appendix, *infra*, pp. 21–22). Bulletin No. 1 provided that the insurance should be paid in monthly installments at the rate of $5.75 for each $1,000 of insurance, "the equivalent, when paid for 240 months, of the sum insured, on the basis of interest at the rate of 3½ percent per annum."

Section 303 was enacted on June 7, 1924, for the purpose, as recognized by the court below (R. 36–37), of having the obligation of the United

States to the estate of an insured under a contract of yearly renewable term insurance paid in one sum rather than in monthly installments as originally provided. Since the total amount paid under the contract had been increased beyond the face value of the contract as an incident of the installment method of payment (i. e., as the result of the allowance of interest on the amounts required by the installment method to be deferred in payment), Congress, of course, directed that this increase be eliminated when it provided that payment be made in one sum. The elimination of the installment interest was accomplished by the direction that "the present value" [10] of the installments be paid.

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[10] The Director of Insurance of the Veterans' Administration has defined "present value" as follows: "The present or commuted value of a monthly annuity certain due, that is, a series of payments made at the beginning of each month for a specified number of months, is that amount which, if placed at interest at a certain assumed rate, will provide for the payment of each installment as it falls due. When the last installment falls due the amount in the fund will exactly equal this installment and the fund will be exhausted. Thus it will be seen that each monthly payment after the first is made up partly of principal and partly of interest. When a series of payments is given and it is desired to obtain the commuted or present value of the series, each payment falling due after a certain date is discounted back to that date and the sum of the discounted values is the present or commuted value of the series of installments." (R. 29.) Cf. Sprague "The Accountancy of Investment" (Perrine Revision, 1919), p. 32; Lock and Scott "Arithmetic for Schools" (American edition, 1916), p. 198; Karpinski, Benedict and Calhoun, "Unified Mathematics" (revised, 1922), p. 184.

Since Section 303 was made retroactive to October 6, 1917, and since the word "thereafter" in the section obviously related to the death of the insured or other person specified in the statute, all installments payable to the estate of an insured were required by the 1924 Act to be reduced to present value. The effect of the legislation, therefore, was to eliminate installment interest even in cases in which installment awards had been made under the authority of earlier legislation. Such was the interpretation of the General Counsel of the Veteran's Bureau in the case of Arthur O'Neill Cody (R. 25–26) and, as recognized by the Court of Appeals (R. 37), the 1925 amendment was passed to resolve problems like that of the *Cody* case.

The amendment avoided a retroactive withdrawal of the interest embodied in installments previously paid by inserting the clause "said value to be computed as of date of last payment made under any existing award." This is true because installment payments under prior awards were thus excluded from reduction to present value. In other words, the date as of which the present value of the monthly installments was computed determined the number of installments reduced to present value.[11]

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[11] To illustrate the effect of the 1924 Act and of the 1925 amendment, utilizing the facts of the Cody case:

If an insured, having $10,000 yearly renewable term insurance in force, died on June 5, 1922, after receiving 44 installments by reason of total permanent disability and was

The amendment obviously did not apply to any case except one in which an installment award had been made to the estate of an insured under the authority of legislation antedating Section 303. (Appendix, *infra*, pp. 24–26.) Section 303, upon its face, both in the 1924 enactment and in the amendment of 1925, relates to the method of making payment to the estate of an insured, and the amendment expressly excludes awards to other beneficiaries from the scope of the section. (Appendix, *infra*, pp. 27–28.) The 1924 enactment directs payment in one sum, determinable by a single stated process of computation which elimi-

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not survived by anyone within the permitted class, 196 installments, having a present value of $8,634, would remain unpaid as of the date of the death of the insured, and that sum would constitute the whole of the money payable to the estate of the insured under the Act of June 7, 1924, even though 25 installments had been paid to the estate under the authority of legislation in existence prior to Section 303; the sum of the 25 installments would simply be deducted from the $8,634.

However, under the 1925 amendment, the sum of the 25 installments, $1,437.50, already paid to the estate of the insured, would be undisturbed, and the present value of the 171 installments remaining unpaid on the date of last payment under the installment award, $7,784, would be paid, so that the estate would receive an aggregate sum of $9,221.50. Thus, $587.50 represents the difference between computing the present value of the installments payable as of the date of the death of the insured, as required by the 1924 Act, and computing the present value of the installments payable as of the date of last payment made under any existing award, as required by the 1925 Act.

nates installment-interest from the installments embodied in that one sum payment. The 1925 amendment merely excludes from the effect of this process installments paid under the authority of legislation antedating Section 303.

The Court of Appeals recognizes that there is in the statute no express language authorizing installment payments when the one-sum present-value payment prescribed by Section 303 has been delayed. The court, however, erroneously assumes that the "rationales" of the methods of computation prescribed by the statute require the conclusion that the Government's liability should be computed on an installment basis when the one-sum payment, directed by the statute, has been delayed.

(a) The reason for the elimination in the Act of 1924 of installment interest to the estate of an insured was, as shown above, simply the fact of the discontinuance of installment payments to such an estate, and the resultant acceleration of the due date of the whole of the remaining obligation. Interest had been allowed in the process of converting the principal obligation into monthly installments and, consequently, was eliminated when, upon reversing that process, the unpaid monthly installments were, in effect, reconverted into the corresponding portion of the principal obligation. As this Court recognized in *United*

States v. *Worley*, 281 U. S. 339, 343–344, discussed more fully hereinafter (pp. 17–18), "The Act does not provide for the payment of any interest on past due installments. It has been uniformly construed by the Bureau not to allow any. There is nothing in the conduct of the United States in respect of life and disability insurance from which an agreement on its part to pay interest may reasonably be implied." Delay in payment after the due date of the one sum obligation, substituted by the Act of 1924 for the earlier installment obligation, is no more a reason for an allowance of interest than is delay in payment after the due dates of the installment obligation.

Congress could not have been unaware of the fact that there would be delay in payment in many cases under Section 303—as well as delay in the payment of other benefits authorized by the World War Veterans' Act, such as the benefit awarded to the estate of the beneficiary in the instant case. But evidently Congress was unwilling to authorize an increase generally in the obligations payable under the insurance title of the World War Veterans' Act because of delay in payment after the due date of the obligation, and saw no reason why an exception in this respect should be made in favor of the estate of an insured.[12] Indeed there is evidence that Con-

[12] Congress must have recognized that suit under Section 19 of the World War Veterans' Act (38 U. S. C. 445), as in

gress would not have intended discrimination in favor of the estate of an insured and against all living beneficiaries. On July 2, 1926, Congress enacted an amendment to Section 305 of the World War Veterans' Act (48 Stat. 799; 38 U. S. C. 516), which has been judicially recognized as designed to exclude estates from the benefit of insurance revived under that section after the date of the amendment. *United States* v. *Lee*, 101 F. (2d) 472, 474 (C. C. A. 6).

(b) The fact that Congress, in the 1925 Act, manifested an intention to avoid a retroactive withdrawal of the interest embodied in installments paid pursuant to earlier legislation, provides no basis for assuming an intention on the part of Congress to allow installment interest when the one sum obligation, prescribed in Section 303 on a basis necessarily excluding such interest, is delayed in payment. On the contrary, it is, of course, a familiar rule of statutory construction that where the legislature has provided one or more exceptions to

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this case, would result in long delay in the ascertainment whether any liability on the part of the United States existed and, if so, to whom and in what amount, and hence in the payment of the obligation, if any, found to exist as a result of the litigation. Yet Congress did not, in Section 19 or elsewhere, manifest an intention that any obligation of the United States be increased because of delay in the recognition and payment of the obligation.

the operation of an enactment, it must be presumed to have intended no other exceptions.

II

THE SUM AWARDED TO THE RESPONDENT BY THE COURT OF APPEALS DOES, IN FACT, INCLUDE INTEREST ON A PAST DUE OBLIGATION OF THE UNITED STATES, CONTRARY TO THE RULE STATED IN *UNITED STATES* V. *WORLEY*, 281 U. S. 339

It is not disputed that as of June 24, 1924, the Government was obligated to the estate of the insured in the amount of only $8,234. Although the court below does not purport to so decide, its holding that the same obligation may now be discharged only by the payment of $10,580 necessarily embraces an allowance of interest upon a past due obligation of the Government.

In *United States* v. *Worley*, 281 U. S. 339, 341, this Court stated the rule to be that "the United States will not be required to pay interest except where the liability is imposed by statute or assumed by contract." The only interest assumed by contract or imposed by statute in respect to yearly renewable term insurance is the interest allowed to the due date of each monthly installment when the obligation is discharged by that method. This interest was computed and allowed in the process of converting the obligation into monthly installments. (Described, *supra*, pp. 10, 14.)

But this Court stated in *United States* v. *Worley*, *supra* (pp. 343–344):

> The Act does not provide for the payment of any interest on *past due installments*. It has been uniformly construed by the Bureau not to allow any. There is nothing in the conduct of the United States in respect of life and disability insurance from which an agreement on its part to pay interest may reasonably be implied. [Emphasis supplied.]

It is true, of course, that the quoted language was not directed to the precise question here presented. Nevertheless, it is, we submit, fully applicable in the instant case. Whether or not it thought it was doing so, the court below, in the judgment, did in fact allow interest upon a past due obligation of the United States, contrary to the *Worley* decision.

III

THERE ARE NO COGENT REASONS WHY THE CONSISTENT LONG-CONTINUED ADMINISTRATIVE PRACTICE SHOULD BE OVERTURNED IN THIS CASE

The decision of the court below is opposed to the administrative interpretation and practice adopted by the Veterans Administration and its predecessors from the date of the passage of Section 303, and followed consistently since that time (Letter of the Administrator of Veterans' Affairs, dated July 14, 1941, R. 41–42) in the adjudication of more than

50,000 cases (Letter of the Administrator of Veterans' Affairs, dated November 6, 1941, Pet. 14–15), This construction is entitled to great weight (*United States* v. *Moore*, 95 U. S. 760, 763; *Norwegian Nitrogen Co.* v. *United States*, 288 U. S. 294, 315), and should not be overturned except for the most cogent reasons (*United States* v. *Jackson*, 280 U. S. 183, 193; *United States* v. *Madigan*, 300 U. S. 500, 505; *New York, Chicago & St. Louis R. R. Co.* v. *Frank*, No. 15, present Term, decided by this Court December 8, 1941). No such reasons have been shown for overruling the administrative construction.

On the contrary, we believe that Congressional approval of the administrative construction of the 1924 Act, as embodied in the opinion of the General Counsel of the Veterans Administration in the Cody case (*supra* p. 12), is manifest. Congress legislated to alter the effect of the statute, as construed administratively, with respect to a limited class of cases when it enacted the 1925 amendment, but has taken no action to avoid the administrative construction in its application to the more than 50,000 cases which have been adjudicated under Section 303 since its amendment in 1925.

Also, the fact alone that in the seventeen years of the statute's existence no previous contention that the administrative construction is erroneous has been made, at least in any reported case, is strong

evidence that no cogent reasons exist for overturning that construction.

CONCLUSION

For the reasons stated, we respectfully submit that the judgment of the Court of Appeals should be reversed and that of the District Court affirmed.

CHARLES FAHY,
Solicitor General.
JULIUS C. MARTIN,
Director, Bureau of War Risk Litigation.
WILBUR C. PICKETT,
KEITH L. SEEGMILLER,
W. MARVIN SMITH,
Attorneys.

MARCH 1942.

APPENDIX

Sections 400 and 402 of the War Risk Insurance Act of October 6, 1917 (c. 105, 40 Stat. 409–410):

SEC. 400. That in order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department greater protection for themselves and their dependents than is provided in Article III, the United States, upon application to the bureau and without medical examination, shall grant insurance against the death or total permanent disability of any such person in any multiple of $500, and not less than $1,000 or more than $10,000, upon the payment of the premiums as hereinafter provided.

SEC. 402. That the director, subject to the general direction of the Secretary of the Treasury, shall promptly determine upon and publish the full and exact terms and conditions of such contract of insurance. The insurance shall not be assignable, and shall not be subject to the claims of creditors of the insured or of the beneficiary. It shall be payable only to a spouse, child, grandchild, parent, brother, or sister, and also during total and permanent dis-

ability to the injured person, or to any or all of them. The insurance shall be payable in two hundred and forty equal monthly installments. * * * All calculations shall be based upon the American Experience Table of Mortality and interest at three and one-half per centum per annum, except that no deduction shall be made for continuous installments during the life of the insured in case his total and permanent disability continues more than two hundred and forty months. Subject to regulations, the insured shall at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries, but only within the classes herein provided. If no beneficiary within the permitted class be designated by the insured either in his lifetime or by his last will and testament or if the designated beneficiary does not survive the insured, the insurance shall be payable to such person or persons, within the permitted class of beneficiaries as would under the laws of the State of the residence of the insured, be entitled to his personal property in case of intestacy. If no such person survive the insured, then there shall be paid to the estate of the insured an amount equal to the reserve value, if any, of the insurance at the time of his death, calculated on the basis of the American Experience Table of Mortality and three and one-half per centum interest in full of all obligations under the contract of insurance.

Bulletin No. 1 of the Bureau of War Risk Insurance (United States Veterans' Bureau Regulations and Procedure, pp. 1233–1237) provided in part:

TERMS AND CONDITIONS OF SOLDIERS' AND SAILORS' INSURANCE

OCTOBER 15, 1917.

* * * * *

[Form of policy for $5,000]

MILITARY AND NAVAL INSURANCE POLICY NO. 1

Amount, $5,000. Age, 25.
Monthly installments: $28.75

THE UNITED STATES OF AMERICA, TREASURY DEPARTMENT, BUREAU OF WAR RISK INSURANCE

Under the authority granted by Congress in an act amending "An act entitled 'An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department,' approved September 2, 1914, and for other purposes," approved October 6, 1917, and subject in all respects to the provisions of such act, of any amendments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which, together with this policy, the application therefor, and the terms and conditions published under authority of the act, shall constitute the contract:

Hereby insures from and after the ——— day of ———, 19—, John Doe, of Illinois, private, Company A, Third Infantry, conditioned upon the payment of premiums as herein provided, for the principal amount

of $5,000 converted into monthly installments of $28.75 (the equivalent, when paid for 240 months, of the sum insured, on the basis of interest at the rate of 3½ percent per annum) payable—

To the insured, if he/she, while this insurance is in force, shall become totally and permanently disabled, commencing with such disability as established by the award of the director of the bureau and continuing during such disability; and

To the beneficiary or beneficiaries hereinafter designated, commencing upon the death of the insured, while the insurance is in force, and (except as otherwise provided) continuing for 240 months if no installments have been paid for total and permanent disability or if any such installments have been paid, then for a number of months sufficient to make 240 in all:

To Sarah Doe, wife of the insured—

If no beneficiary within the permitted class be designated by the insured, either in the insured's lifetime or by his last will and testament, or if any above-designated beneficiary is or becomes disqualified or does not survive the insured, the insurance (or if any above-designated beneficiary shall survive the insured, but shall not receive all the installments, then the remaining installments) shall be payable to such person or persons within the permitted class of beneficiaries as would under the laws of the insured's place of residence be entitled to his personal property in case of intestacy.

* * * * * * *

Sections 14, 15 and 19 of the Act of December 24, 1919 (c. 16, 41 Stat. 376–377).[13]

---

[13] Sections 14, 15, and 19 of the Act of December 24, 1919, and Section 26 of the Act of August 9, 1921, are not referred

SEC. 14. That if no person within the permitted class of beneficiaries survive the insured, then there shall be paid to the estate of the insured the monthly installments payable and applicable under the provisions of Article IV of the War Risk Insurance Act.

SEC. 15. That if any person to whom such yearly renewable term insurance has been awarded dies, or his rights are otherwise terminated after the death of the insured, but before all of the two hundred and forty monthly installments have been paid, then the monthly installments payable and applicable shall be payable to such person or persons within the permitted class of beneficiaries as would, under the laws of the State of residence of the insured, be entitled to his personal property in case of intestacy; and if the permitted class of beneficiaries be exhausted before all of the two hundred and forty monthly installments have been paid, then there shall be paid to the estate of the last surviving person within the permitted class the remaining unpaid monthly installments.

SEC. 19. That the amount of the monthly installments of allotment and family allowance, compensation, or yearly renewable term insurance which has become payable

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to specifically in the brief. They are set forth here because they are the legislative provisions governing the entitlement of the insured's estate to insurance prior to June 7, 1924. It will be noted that under Section 402 of the War Risk Insurance Act of October 6, 1917, no insurance could be paid to the estate of the insured. While that section did provide for payment of the reserve value, if any, to the estate of the insured, yearly renewable term insurance has no reserve value. Converted insurance, also authorized by the Act of October 6, 1917, does have a reserve value.

under the provisions of the War Risk Insurance Act but which has not been paid prior to the death of the person entitled to receive the same may be payable to the personal representatives of the deceased person.

Section 26 of the Act of August 9, 1921 (c. 57, 42 Stat. 156):

> SEC. 26. A new section is hereby added to Article IV of the War Risk Insurance Act (including therein section 14 of the Act entitled "An Act to amend and modify the War Risk Insurance Act," approved December 24, 1919), to be known as section 407, and to read as follows:
>
> "SEC. 407. If no person within the permitted class of beneficiaries survive the insured, then there shall be paid to the estate of the insured the monthly installments payable and applicable under the provisions of Article IV of the War Risk Insurance Act: *Provided*, That in cases where the estate of the insured would escheat under the laws of the place of his residence the insurance shall not be paid to the estate of the insured, but shall escheat to the United States and shall be credited to the United States Government life insurance fund or the military and naval insurance appropriation, as may be proper. This section shall be deemed to be in effect as of October 6, 1917."

Section 303 of the World War Veterans' Act of June 7, 1924 (c. 320, 43 Stat. 625):

> SEC. 303. If no person within the permitted class of beneficiaries survive the insured, or if before the completion of payments the beneficiary or beneficiaries shall die and there be no surviving person within said permitted class, then there shall

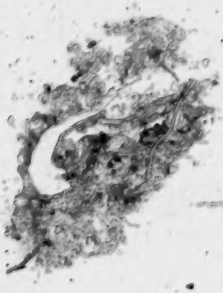
be paid to the estate of the insured, the present value of the monthly installments thereafter payable under the provisions of this title: *Provided,* That in cases where the estate of the insured would escheat under the laws of the place of his residence the insurance shall not be paid to the estate of the insured, but shall escheat to the United States and shall be credited to the United States Government life-insurance fund or the military and naval insurance appropriation, as may be proper. This section shall be deemed to be in effect as of October 6, 1917.

Section 303 of the World War Veterans' Act, as amended by the Act of March 4, 1925 (c. 553, 43 Stat. 1310; 38 U. S. C. 514):

SEC. 14. Section 303 of the World War Veterans' Act, 1924, approved June 7, 1924, is hereby amended to read as follows:

"SEC. 303. If no person within the permitted class be designated as beneficiary for yearly renewable term insurance by the insured either in his lifetime or by his last will and testament or if the designated beneficiary does not survive the insured or survives the insured and dies prior to receiving all of the two hundred and forty installments or all such as are payable and applicable, there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable, said value to be computed as of date of last payment made under any existing award: *Provided,* That all awards of yearly renewable term insurance which are in course of payment on the date of the approval of this Act shall continue until the death of the person receiving such payments, or until he for-

feits same under the provisions of this Act. When any person to whom such insurance is now awarded dies or forfeits his rights to such insurance then there shall be paid to the estate of the insured the present value of the remaining unpaid monthly installments of the insurance so awarded to such person: *Provided further,* That no award of yearly renewable term insurance which has been made to the estate of a last surviving beneficiary shall be affected by this amendment: *Provided further,* That in cases when the estate of an insured would escheat under the laws of the place of his residence the insurance shall not be paid to the estate but shall escheat to the United States and be credited to the military and naval insurance appropriation. This section shall be deemed to be in effect as of October 6, 1917."



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 738.

THE UNITED STATES OF AMERICA, *Petitioner*,

v.

ELIZABETH KERR, ADMINISTRATRIX OF THE ESTATE OF JOSEPH KELLY KERR, DECEASED.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

CAMDEN R. MCATEE,
Attorney for Respondent.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 738.

THE UNITED STATES OF AMERICA, *Petitioner*,

v.

ELIZABETH KERR, ADMINISTRATRIX OF THE ESTATE OF JOSEPH KELLY KERR, DECEASED.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

BRIEF OF RESPONDENT IN OPPOSITION.

OPINION BELOW.

The Opinion below (R. pp. 36-38) is reported in 122 F. (2) 638.

JURISDICTION.

The judgment below (R. p. 39) was entered June 30, 1941. The petition for rehearing, (R. pp. 39-40), filed July 15, 1941, was denied, (R. p. 46), August 11, 1941. The juris-

diction of this Court is invoked under Section 240 of the Judicial Code, as amended by the Act of February 13, 1925.

STATUTES INVOLVED.

Reference is made to the profert in the petition, (pp. 2-3, 12-13) from the World War Veterans Act, of Section 303 original, enacted June 7, 1924, and Section 303 amended, substituted therefor by its enactment on March 4, 1925. Their provisions and substance appear in the following Statement.

QUESTIONS PRESENTED.

Whether the statutory obligation of the United States, on April 5, 1940, to the estate of the insured for 184 contract installments under Section 303 as amended—"the present value of the monthly installments thereafter (after death of the surviving beneficiary) payable, said value to be computed as of the date of last payment under any existing award"—is $8,234, their present value in June, 1924, at the death of the beneficiary, or is $10,580 their present value in and after October, 1939, where it appears that all of said installments, and those applicable and payable to the designated beneficiary, had previously accrued in October, 1939, with liability therefor denied and payment refused from November 8, 1919, until December 4, 1939, and that there was an existing and payable judicial award to the estate of the beneficiary of the installments "payable and applicable" before his death, as also provided in Section 303 as amended.

The question merely involves adherence to the statute, and is not whether delay affects the computation as propounded in the petition.

STATEMENT.

Section 303 as amended,[1] of the World War Veterans Act, as amended, provides that, if the designated beneficiary of

[1] Act of March 3, 1925 (43 St. 1310; 38 U. S. C., Sec. 514).

a yearly renewable war term life insurance contract issued by the United States "survives the insured and dies prior to receiving all of the 240 installments, *or all such as are payable and applicable,* there shall be paid to the estate of the insured *the present value of the monthly installments thereafter payable, said value to be computed as of date of last payment under any existing award.*"

The application of the quoted statutory provisions in determining the amount of the obligation of the United States to the estate of the insured is the issue herein where the United States always denied the contract was in effect at the death of insured on November 8, 1919, until the appellate court below held on December 4, 1939, that the contract was in effect in November, 1919.[2] As the 240 monthly installments due in November, 1919, and each month thereafter until all were accrued in October, 1939, were all unpaid, the trial court on April 5, 1940, gave the statute effect by its two separate judgment awards, *approved and entered by consent of the parties on said date,*[3] as the judicial liquidation of the claims made below to the contract proceeds, viz,—of $3,220, as the proceeds of the 56 contract installments due and payable but unpaid to the beneficiary before his death in June, 1924, for recovery by the estate of the beneficiary from the United States, and of $10,580, as the present value, either in October, 1939, or thereafter, of the 184 remaining contract installments payable after the death of the beneficiary, for recovery by the estate of the insured from the United States.

The judgment awards so entered were thereupon reviewed and found correct by the Bureau of War Risk Litigation, and accordingly were certified to the Veterans Administration for payment.[4]

Subsequently, on June 21, 1940, the United States moved in the trial court for amendment of the judgment award of $10,580 by its reduction to $8,234, which was alleged to

[2] R. p. 1.
[3] R. pp. 2-3.
[4] R. p. 8.

be the present value of the 184 installments in June, 1924, at the death of the beneficiary.[5] The motion alleges such award of only $8,234 was proper under an administrative practice and construction of Section 303 as amended that was not applied in computing the consent judgment award of $10,580 because of surprise, mistake, neglect or inadvertence.[6]

The parties stipulated that 184 installments were payable from July, 1924, through October, 1939, after the death of the designated beneficiary, and had a present value in June, 1924 of $8,234, and a present value in October, 1939, or thereafter, of $10,580.[7]

The parties, by controversial affidavits, disputed the existence or application of the administrative practice alleged in the motion.[8]

The trial court sustained the motion, and by its order of January 9, 1941,[9] amended its prior judgment award of $10,580 and reduced same to $8,227.50, (being $8,234 less $6.50, offset to the United States as payment of the unpaid grace month premium for November, 1919, which incidental recovery is not in issue herein). The estate of the beneficiary thereupon received from the Veterans Administration payment of its $3,220 judgment award.[10] The estate of insured appealed, and, on June 30, 1941, in the Court of Appeals below, obtained its judgment[11] with opinion,[12] reversing the reduction of the original judgment award from $10,580 to $8,234, (but subject to the premium offset).

The United States filed a petition for rehearing,[13] and therein sought to disclose the administrative practice was in conflict with the appellate opinion below, by exhibiting

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[5] R. p. 3.
[6] The motion was predicated upon F. R. C. P. 60 (b).
[7] R. p. 4.
[8] R. pp. 4-8.
[9] R. pp. 30-31.
[10] Pet. p. 4.
[11] R. p. 39.
[12] R. pp. 39-40.
[13] R. p. 39.

a letter from the Veterans Administrator.[14] Manifest errors in the letter were pointed out by the estate of insured.[15] The petition was overruled.[16] Thereupon, the present petition for writ of certiorari was filed and exhibits another letter of the Veterans Administrator,[17] equally inapplicable to the material question.

ARGUMENT.

I. Neither substance nor application to the present case is shown in the Errors Assigned or Reasons Stated in the petition as grounds for issue of the writ.

II. Precedents not adverted to below further justify the original award of $10,580.

I.

The first and second Reasons Assigned[18] are that the decision below directly opposes a long established and consistent administrative practice, and will impose burdensome financial and administrative consequences.

Such practice is stated that "All cases which have been adjudicated in favor of estates under Section 303 of the World War Veterans Act have been settled upon the basis of the present value of installments as of the date the insured's estate became entitled to receive payment, except as hereinafter explained."

Such administrative practice is not pertinent here. This case is not being adjudicated under Section 303. Its adjudication is admittedly under Section 303 as amended, under a later and a different statutory rule, which is held by this Court to have effected a radical change in the prior law.[19]

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[14] R. p. 41.
[15] R. pp. 42-46.
[16] R. p. 46.
[17] Pet. p. 14.
[18] Pet. pp. 5-6.
[19] *Singleton* v. *Cheek*, 284 U. S. 493, 496.

If it were adjudicable under Section 303, every installment payable after the death of the beneficiary would either be payable to Elizabeth Kerr, or to her and/or other permitted statutory beneficiaries in meagre payments until there was no survivor of the class, and only then would the present value of the installments be payable to the estate of the insured in a lump sum.[20]

Section 303 was repealed and Section 303 as amended, as a radical change in the prior law, was substituted in March, 1925.[21] Consequently, any administrative practice applicable to Section 303 fell away sixteen years years ago. There is no practice that properly may be set up in opposition to the appellate decision below.

As for the second Reason of administrative and financial burdens, the Administrator advises in his subsequent letter[22] that 58,953 cases have been adjudicated under Section 303 as amended in accordance with the above quoted administrative practice set forth in his earlier letter.

How cases declared adjudicated under Section 303 as amended, which the Administrator and petitioner insist is an exception to and hence outside of Section 303, were thereby adjudicated under the radically different provisions of repealed Section 303, or under its obsolete practice, requires another letter of explanation. At present it is evident, where 58,963 cases have been given administratively the benefits of Section 303 as amended, that the addition of this case to the group by its judicial adjudication below under Section 303 as amended, results in neither burdensome nor financial consequences.

The third Reason, alleging erroneous interpretation below of Section 303,[23] embodies departure again from Section 303 as amended in 1925 and substituted for original Section 303, and from other precedents. *Singleton* v. *Cheek*, and *White* v. *United States*, cited to establish Section 303 in

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[20, 21] Vide Section 303 original and Section 303 as amended in Petition Appendix (pp. 12-13), and *Singleton* v. *Cheek, supra.*

[22] Pet. p. 14.

[23] Pet. p. 7.

1924 became part of the insurance contract, make no reference to original Section 303, and, on the contrary, *Singleton* v. *Cheek*, after quoting Section 303 as amended in 1925, and setting forth an administrative award made in 1925 under Section 303 as amended, holds the amended section effected a radical change in the statute.[24] In other words, since Section 303 as amended has entirely superseded original Section 303 as a radical change of the statute, the exploration of Section 303 or its obsolete practice has no substantial or useful application to the present controversy.

The petition says the Court below[25] considered that Congress, in enacting original Section 303, intended the correlation of the obligation with the date of payment. This omits that the Court below gave consideration to Section 303 as amended as entirely controlling.[26] The statement that Section 303 as amended was represented to and accepted by Congress as limited in its application to awards in course of payment at the passage of the Act of 1924 is contradicted by its provisions, by the Committee reports and by the Administration recommendation of the amendment and its purposes.[27]

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[24] *Supra* note 19.

[25] Pet. p. 7.

[26] R. p. 37.

[27] Vet. Adm. Recommendation, R. p. 17; Cong. Comm. Rep., R. pp. 19-20. Also to the contrary:

R. p. 27—The Comptroller General in 1926 held award should be made under Section 303 as amended.

R. p. 21—The Veterans Commissioner advised the trial court:

"Section 303 as amended * * * was intended to supersede all prior legislation."

In *Singleton* v. *Cheek* (*supra*) as in this case, no administrative or other awards were made until long after the death of the designated beneficiary. In August, 1925, they were made, under Section 303 as amended, by the Administration. Whether the determination of present value was made therein after the death of the beneficiary as of the date of subsequent award and payment to his estate is not stated in the opinion, but that it was so made is the obvious requirement of Section 303 as amended.

These matters of record demonstrate any contention that the principles and practices under the original but repealed Section 303 remained applicable to all subsequent awards, is entirely without substance. The argument fails entirely since it is apparent this case remains posed in all its aspects, under Section 303 as amended.

The contention that the award of $10,580 requires the payment of interest[28] contrary to the rule that the liability must be "imposed by statute or assumed by contract" has no substance. Here the statute is part of the contract and intends its just payment. Therefore, any interest enveloped in the award is both imposed by statute and assumed by contract.

The contention that administrative construction is not shown to have been clearly erroneous and should therefore have effect[29] also is without substance; it is evident such construction fell away with the repeal of Section 303.

The Reasons being shown untenable, it is submitted the Errors rested upon them are likewise without substance.

II.

The original judgment award is justified by other precedents not adverted to, nor included in the reasoning of the opinion below.

By statutory provision, or otherwise, an original administrative controversy upon institution of action becomes a judicial controversy.[30] This has been expressly held by the Court below in reference to claims to veterans insurance contract proceeds, and that the resulting judgment is

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[28] Pet. p. 9.
[29] Pet. p. 10.
[30] *Old Colony Trust Co.* v. *Commissioner*, 279 U. S. 716, 725.

forthwith payable from available funds.[31] It follows that the judgment award below to the estate of the beneficiary being forthwith payable is deemed paid, and that its date fixes and becomes the time for the statutory computation of the amount to be adjudged to the estate of the insured.[32]

In an other aspect, under specific decisions of this Court and administrative duties therein imposed or recognized, the judgment award for $10,580 is again sustained. Once the right to recover is established by judgment, the Administration will pay the subsequent installments to the persons entitled.[33] Upon determination, by the judgment of 1939, that the contract was effective, administrative awards to the estate of the beneficiary and to the estate of the insured would thereupon be possible, and the award to the estate of the insured would be for $10,580 under Section 303 as amended.[34] If only the judgment award to the estate of the beneficiary was made in October, 1939, or thereafter, the ensuing administrative award to the estate of the insured would again be $10,580.

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[31] *Hines* v. *United States*, 70 App. D. C. 206, 106 F. (2) 85:

> "Sec. 17 of Title I of the Act sets up a fund to pay insurance benefits provided for by Title III. Whenever there is a disagreement between the insured and Administrator concerning any insurance benefits which may be due under Title III, the Administrator is given the discretionary power by sec. 17 to determine the question, and, if his decision is favorable to the insured, to award and pay benefits from the fund. However, if the Administrator determines the question adversely to the insured, sec. 19 of Title I, 38 U. S. C. A. Par. 445, allows the insured to test the determination of the Administrator by proceeding in a district court of the United States. In the event the court decides in favor of the insured and enters judgment, the fund established by sec. 17 is available for the payment of the judgment. It will thus be seen that the discretion of the Administrator under Title III or sec. 17 of the Act is not conclusive, as sec. 19 provides for a judicial determination of the controversy."

[32] Maxim: What is implied is as effectual as what is expressed (86 U. S. 666).

[33] *United States* v. *Towery*, 306 U. S. 324, 331.

[34] Cf. *Singleton* v. *Cheek*, in Note 27 *supra*.

III.

Lack of error in the opinion and judgment be
of substance in the reasons submitted to supp
tion being both apparent, it should be denied.

Respectfully submitted,

CAMDEN R. McA
Attorney for

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ort the peti-

TEE,
Respondent.

BRIEF FOR THE RESPONDENT

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

No. 738

THE UNITED STATES OF AMERICA, *Petitioner*,

v.

CITIZENS' LOAN & TRUST COMPANY, Administrator De Bonis Non of the Estate of JOSEPH KELLY KEBR, Deceased.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

BRIEF FOR RESPONDENT.

CAMDEN R. McATEE,
Attorney for Respondent.

Of Counsel:
JAMES W. BLAIR,
MASON, SPALDING & McATEE.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

No. 738

THE UNITED STATES OF AMERICA, *Petitioner*,

v.

CITIZENS' LOAN & TRUST COMPANY, Administrator De Bonis Non of the Estate of JOSEPH KELLY KERR, Deceased.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

BRIEF FOR RESPONDENT.

OPINIONS BELOW.

The opinion of the United States Court of Appeals for the District of Columbia (R. 36-38) is reported in 122 F. (2) 638, and was rendered on the second appeal of this case by the plaintiff below. The opinion on the first appeal, which also reversed the trial court, is reported in 108 F. (2) 585. The trial court rendered no opinion on either its first or second hearing of the case.

JURISDICTION.

Judgment (R. 39) was entered by the Court of Appeals on June 30, 1941. Petition for rehearing (R. 39-46) was

denied (R. 46) August 11, 1941. The Petition of Certiorari was filed November 10, 1941 and granted (R. 48) December 15, 1941. Jurisdiction is conferred by Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED.

Whether, under Section 303, World War Veterans' Act, 1924, as amended, the amount of the Government's obligation to the estate of an insured under a contract of yearly renewable term insurance is increased by delay in its payment.

STATUTE INVOLVED.

The part of the Section preceding the provisos is involved. Amended Section 303 of the World War Veterans' Act as enacted by Section 14 of the Act of March 4, 1925, c. 553, 43 Stat. 1302, 1310 (38 U. S. C. 514), provides as follows:

> "Sec. 14. Section 303 of the World War Veterans' Act, 1924, approved June 7, 1924, is hereby amended to read as follows:
>
> "Sec. 303. If no person within the permitted class be designated as beneficiary for yearly renewable term insurance by the insured either in his lifetime or by his last will and testament or if the designated beneficiary does not survive the insured or survives the insured and dies prior to receiving all of the two hundred and forty installments or all such as are payable and applicable, there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable, said value to be computed as of date of last payment made under any existing award: *Provided*, That all awards of yearly renewable term insurance which are in course of payment on the date of the approval of this Act shall continue until the death of the person receiving such payments, or until he forfeits same under the provisions of this Act. When any person to whom such insurance is now awarded dies or forfeits his rights to such insurance then there shall be paid to the estate of the insured the present value of the remain-

ing unpaid monthly installments of the insurance so awarded to such person: *Provided further*, That no award of yearly renewable term insurance which has been made to the estate of a last surviving beneficiary shall be affected by this amendment: *Provided further*, That in cases when the estate of an insured would escheat under the laws of the place of his residence the insurance shall not be paid to the estate but shall escheat to the United States and be credited to the military and naval insurance appropriation. This section shall be deemed to be in effect as of October 6, 1917."

STATEMENT.

By a contract of yearly renewable term insurance the United States insured the life of Joseph Kelly Kerr, a soldier, in the principal sum of $10,000 (R. 1), providing for payment to his designated beneficiary, in case of his death, of $13,800 in 240 deferred monthly installments of $57.50 each as the equivalent of the principal sum created within the term upon the basis of interest at 3½ per cent per annum. Section 303 as amended in 1925, of the World War Veterans Act, governs the payment or recovery, by the estate of the insured, of the subsequent payable installments where a beneficiary survives insured, but dies before receiving the installments payable or applicable to his interest, by its provision in such case, which is the present case, that:

> " * * * there shall be paid to the estate of insured *the present value of the monthly installments thereafter payable, said value to be computed as of the date of last payment under any existing award.*"[1]

Upon the death of insured on November 8, 1919, and for more than twenty years thereafter, the United States denied the contract was in effect, and that it was liable on the insurance contract. This disagreement between the par-

[1] *White* v. *United States*, 270 U. S. 175; *Singleton* v. *Cheek*, 284 U. S. 493; *Pagel* v. *Pagel*, 291 U. S. 473; *McCulloch* v. *Smith*, 293 U. S. 228.

ties resulted in the present action and judicial controversy as to the liability until same was finally determined and adjudged by the United States Court of Appeals for the District of Columbia on December 4, 1939, in the first appeal by the estate of insured from the dismissal of the action by the judgment of the trial court. (R. 1)

Pursuant to this delayed appellate determination, with the estate of the beneficiary and estate of the insured duly before the Court as claimants under Section 303 as amended (R. 1), the trial court on April 5, 1940, entered certain judgment awards previously approved by the government attorney (R. 3).

Thereby (R. 2), recovery against the United States was awarded to the estate of the beneficiary in the sum of $3,220 as the total of 56 installments of $57.50 each applicable and payable but unpaid at the death of the surviving beneficiary on June 24, 1924, and this award is not in present controversy as after January 9, 1941, same was paid. Thereby (R. 2), further recovery was awarded to the estate of the insured in the sum of $10,580 as the amount of the 184 installments accrued in the contract term after the death of the beneficiary. This recovery is in controversy herein as to whether it is, or exceeds, the recovery of the present value of the contract installments payable after death of the beneficiary, by the estate of the insured, provided under section 303 as amended, and this is the sole issue. The entry of the judgment awards further recited that they totalled $13,800, which is the ultimate contract liability, and impressed each award with the attorney fee provided by law for payment therefrom (R. 2).

Thereupon, said judgments awarded were reviewed and certified as correct by the Bureau of War Risk Litigation of the Department of Justice to the Veterans Administration for payment. (R. 8.)

Instead of payment, alleging mistake and inadvertence[2] in their entry, the United States moved the trial court on

[2] The motion was made pursuant to F. R. C. P. No. 60(b).

June 21, 1940, to restate the $3,220 award to the estate of the beneficiary, and to reduce the $10,580 award to the estate of insured to $8,227.50. The mistake and inadvertence subsequently alleged was the failure to call the attention of the tral court to the Administration practice of limiting *the payment of installments of insurance benefits following the death of insured and the death of the designated beneficiary to the commuted value of such installments as of the date of death of the designated beneficiary, rather than the full installments as they have otherwise matured, and regardless of the date of any judgment or award of recovery of such insurance;*[3] also, the failure in the judgment award to set off, against $8,234, alleged in the motion as the present value of the installments at the death of the beneficiary, the $6.50 premium for the grace month of November, 1919, in which the contract matured. The motion only stated the judgment award of $10,580 was contrary to the provisions of Section 303 as amended in that it provided for recovery of contract installments totalling $10,580, instead of their present value (R. 4).

For purposes of the motion, the parties stipulated (R. 4) the present value of the 184 installments payable after the death of the beneficiary was $8,234 at his death and was $10,580 in October 1939, at the end of the contract term, and thereafter, thereby establishing the judgment award of $10,580, as the total of the installments accrued in the contract term, afforded relief identical with a judgment award of $10,580, as their present value at the end of the term, or thereafter. The parties filed controversial affidavits concerning the administrative practice. (R. 4, 7.)

The payment of both judgment awards was delayed by the motion. On January 9, 1941, the trial court entered its order confirming the $3,220 judgment award as correct

[3] This ground appeared first in the affidavit (R. 4) filed *nunc pro tunc* as of June 21, 1940, on January 9, 1941, and, as italicized, is quoted therefrom.

and unaffected by the motion, and its payment followed. By further order of the same date, the trial court reduced its original $10,580 judgment award to $8,227.50, thereby sustaining the government motion, and the estate of the insured appealed therefrom. Upon its reversal by the appellate court, excepting as to the premium offset, and after petition for rehearing was overruled, petition for certiorari duly filed has now been granted. The death of Mrs. Kerr, after the last appellate decision resulted in the substitution of parties.

Having before it the statutory computation of "*present value of the monthly installments*" payable after death of the beneficiary, "*to be computed as of the date of last payment under any existing award,*" the appellate court also had the facts that all the contract installments were accrued and unpaid in the contract term, that judgment award of those payable to the estate of the beneficiary had been made by the trial court, and that the present value of the installments payable after the death of the beneficiary equalled their total amount at the time of the award to the estate of the beneficiary. It also had its own decisions that, after disagreement and institution of action on an insurance contract, judicial control supersedes administrative function, and that judicial insurance awards of the Veterans Administration are forthwith payable with funds available.[4]

The appellate court passed by, in its opinion, these matters of fact and law, which reasonably sustain a conclusion that the beneficiary judicial award herein amounted to its payment, and established the accompanying judicial award to the estate of insured of the total of the overdue installments as their present value.

Instead, the appellate court, while accepting the government contention that Section 303 as amended merely amended original Section 303 to resolve problems in a new class of cases, nevertheless, (R. 37) applied Section 303 as amended, on the ground that the same method of com-

[4] *United States, ex rel Marsh* v. *Hines*, 70 App. D. C. 206, 106 F. (2) 185. *Old Colony Trust Co.* v. *Commissioner*, 279 U. S. 716, 725.

putation provided in both sections was intended to give the estate of insured full use of the money to which it was entitled but never had. Adherence to one conception of a controversy is not material error unless another conception leading to the same result is also equally in error.

SUMMARY OF ARGUMENT.

The errors, assigned as arising in the appellate court decision, (Pet. Br. p. 8) are briefly that literal application of Section 303 as amended does not justify the $10,580 award, and is not justified by delayed payment of present value; that application of Section 303 as amended effects the allowance of interest upon a past due obligation and overturns a justifiable administrative practice. The errors summarize into determination of what is the present value liability upon a government obligation where its payment was delayed by the government.

The controversy here is not under original Section 303 as laid by the government in Point I of its argument (p. 10). Superseding that original section, is Section 303 as amended, to the application of which, delay in payment is no objection.

The original award herein does not include interest contrary to the rule of the *Worley* case.

There is no prior administrative practice applicable to this case, and hence none overturned herein.

The case portends a reexamination by the court of its previous decisions in government insurance contract cases.

ARGUMENT.

The issue is merely the amount payable in discharge of the principal of the contract obligation that is overdue because the government delayed its payment. The contract obligation here is 184 monthly installments due and payable as such in the term beginning in July, 1924, and entirely accrued and unpaid at end of the term in October, 1939, in their total principal amount of $10,580. Subsequent to the end of the contract term, it is to be discharged by pay-

ment of the present value of the total of the installments. The controversy is whether the amount payable is $8,234, their present value in July 1924, or $10,580, their present value at the end of the term and thereafter. (R. 4.) No allowance of interest upon any installment or upon the lump sum present value is involved.

I. Whether there is legislative authority for increasing the amount payable because of delay in payment.

In seeking to place the controversy under original Section 303, on the ground that Section 303 as amended applies only to computation of the present value in a single class of cases, the government ignores that it effected the entire abandonment of original Section 303 by procuring Section 303 as amended in 1925. The gist of the contention is that original Section 303 authorized the computation and payment of installments, of present value as of the date of death of the beneficiary, regardless of when paid; that the administrative practice of doing this continued because Section 303 as amended only created a new rule applicable, and thereafter applied (Pet. Br. p. 13) where commutation was made in liquidation of a prior existing installment award previously made under Section 14 of the 1919 Act, or under Section 407 of the 1921 Act. In other words again, while admitting the present case arises under Section 303 as amended, the government urges the new rule is inapplicable here only because the present case evidently does not involve the commutation of a previous installment award to the estate of an insured.

To resolve the contention it is not necessary to prove the administrative practice wrong that prevailed under original Section 303. It is only necessary to establish that Section 303 as amended entirely superseded original Section 303, and demanded application of a new practice which rendered the previous practice obsolete; if so, the new rule applies to this and all other cases arising under Section 303 as amended. It is only necessary to establish the present case,

admittedly arising under Section 303 as amended, lies actually or substantially under the new practice admittedly required by Section 303 as amended.

Before the enactment of original Section 303 in 1924, the provisions of law for the distribution or payment of the further installments were as follows: To the estate of insured, if no person in the permitted class survived him (Sec. 14, Act of 1919) (Pet. Br. p. 25) (Sec. 407, Act of 1921) (Idem, p. 26), or, in case of such survivor, to the person awarded, until his death or incapacity within the contract term, and, thereupon, to the permitted person or persons entitled under state intestacy laws, and upon exhaustion of the class by death within the term, to the estate of the last surviving person (Section 15, Act of 1919) (Idem, p. 24).

The World War Veterans' Act of 1924 (Sec. 602, 38 U. S. C. 571) in repealing the prior Acts, provided its enactment should not affect any Act done or liability accrued, or any suit previously commenced, and that all such rights and liabilities should continue and be enforcible as if repeal had not been made.

In original Section 303 enacted as part of the World War Veterans Act of 1924, the distribution or payment of further installments as provided was this: To the estate of insured in the amount of their present value, if no person within the permitted class designated as a beneficiary survived him, or if no person within the permitted class was surviving upon the death of the beneficiary during the contract term (Idem, p. 26).

Original Section 303 thus made no provision for cases where persons of the permitted class survived a beneficiary, and became entitled to contract proceeds in course of payment before its enactment. Consequently, the Administration was confronted with these problems, with the necessity of establishing the insured or beneficiary was not survived, of making even minute monthly payments of an installment to various persons, and of requiring the estate of an insured to be held open and unsettled for twenty years or more.

To remove these difficulties, the Bureau showed them to the Congress (R. 17), rewrote Section 303 into new provisions as a substituted section, designed to overcome them, and obtained its enactment as Section 303 as amended in 1925. The record amply discloses the amendment was for no other reason, especially the Committee report, (R. 19) entitled to judicial notice.[5] The record also discloses Section 303 as amended was not obtained nor enacted to meet the *Cody* case, for it shows the Director on June 10, 1925, after its passage, had approved a ruling made therein as a proper application of original Section 303 to the case. (R. 36.)

In *Singleton* v. *Cheek*,[6] this Court holds a radical change and modification of the prior statutes was effected by Section 303 as amended. Thus, its enactment, its provisions and its judicial construction all establish Section 303 as amended as substituted entirely in place of original Section 303, and not as its amendment in an incidental way.

Section 303 as amended, thus, stands alone, and repealed original Section 303. It must be concluded provision for payment of the present value of the unpaid monthly installments merely facilitates its payment and does not curtail the contract amount due;[7] for no power to curtail the amount of the benefits which Congress contracted to pay was reserved to Congress, and none could be given by any administrative regulation.[8]

Payment of present value is not an allowance of interest as part of the amount paid; the parties here agree it is a principal amount which if placed at interest will provide a fund for payment of certain future installments that will exhaust the fund when the last installment payment falls

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[5] *Helvering* v. *Morgan's Inc.*, 293 U. S. 121, 126; *Helvering* v. *New York Trust Co.*, 292 U. S. 455, 464.

[6] 284 U. S. 493, 496.

[7] Cf. Veteran Commissioner report (R. 24); also his conclusion (R. 21): "Section 303 as amended was intended to supersede all prior legislation."

[8] *Lynch* v. *United States*, 292 U. S. 571, 578.

due and is paid.[9] It follows for decision that if no installment was ever paid, its present value is at least the sum of all of them, the amount of the fund when the last installment was due and unpaid.

These propositions that Section 303 as amended stands alone as a radical change of the prior law; that provision for payment of present value entails no curtailment of the amount due by Congress and that present value at the end of the contract term is the sum of the accrued but unpaid installments appear fully to answer the government contentions that there is no legislative authority for payment of actual present value where prevented by government delay, and are so submitted.

The government contentions are submitted not to make erroneous the appellate court reasoning or conclusions. So far as the statutory present value is declared computable *"as of date of last payment under any existing award"*, the appellate court notes herein there was a judicial award to the estate of the beneficiary, but no last payment under any existing award. This omits consideration that in *Hines* v. *United States*,[10] the appellate court held that action on an insurance contract removes its determination from administrative entirely into judicial controversy; that a judgment in favor of an insured is forthwith payable from a fund available to the Veterans Administration, and that nothing short of an action to establish a set-off, if ordered by the Comptroller General, but not accepted by claimant, justifies withholding money adjudged payable by the government. It follows, the $3,220 judicial award, as forthwith payable, was substantially on April 5, 1940, a last payment under an existing award, and that "last existing award", in Section 303 as amended, does not singly embrace only an administrative award.

The appellate court (R. 37) further construes the statutory phrase as providing for determination of present value

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[9] Summary of note 10 (Pet. Br. p. 11).

[10] 70 App. D. C. 206, 209, 212, 106 F. (2) 185; Sec. 442, Title 38, U. S. C. A.; c. 863, 1, 2, 46 St. 1016.

as of the last installment payment on the ground that any previous determination assumes a use of money that was never had, and finally rests its decision on the sound result of the case.

II. The award of the amount of the installments as their present value payable at the end of the contract term does not include interest on a past due government obligation contrary to the Worley case rule.

Point II by the government is that the $10,580 award includes interest on a past due obligation contrary to the *Worley* case rule. The simple answer is the rule states the non-liability is subject to the exception arising where the liability is imposed by statute or assumed by contract. Herein the liability arises in each aspect, and interest is not claimed on any past due installment nor on the present value award.

As a side-light on this contention of interest, let it be assumed a unit of $10,000 in the existing administrative fund has stood as a contingent reserve since November 8, 1919, to provide at 3½ per cent a year a fund sufficient to exhaust the fund by payment of 240 monthly contract installments through October 8, 1939, and that no installment has ever been paid. On April 5, 1940, when $3,220 was awarded and payable, as the 56 installments due until and on June 8, 1924, the material government profit in the ensuing 16 year interval is self-evident upon the unit-part underlying that delayed obligation. Its profit on the unit-part underlying the additional 184 installments accrued and unpaid from November, 1919, to June, 1924, is again evident, as well as its profit thereon from June, 1924, until the present time. These profits arise because the initial unit-parts have stood at interest unreduced by any intended withdrawal of either principal or interest in the ensuing 20 years or more. The conclusion must be the government has profited from its delay because its certain ultimate obligation is only $13,800, which it would have had in hand and paid

progressively through the term if the contemplated installment payments were duly made.

III. No existing and applicable administrative practice is overturned herein by the appellate decision.

Point III, that a consistent long continued administrative practice has been overturned without cogent reason by the appellate court, is rested on three grounds. First, that the practice has consistently prevailed since the enactment of original Section 303 in 1924 in the adjudication of more than 50,000 cases, is entitled to great weight, and is not to be overturned except for the most cogent reasons. Second, that Congress enacted Section 303 as amended to apply to one class of cases, and having taken no action contrary to the application of the administrative practice to the 50,000 cases adjudicated since the amendment in 1925, has approved the administrative construction given in the *Cody* case. Third, that no previous contention has arisen in seventeen years that the construction is erroneous. Each is without substance.

The government brief does not precisely state the administrative practice allegedly overturned. The motion for correction of the $10,580 judgment award (R. 3) does not state or rely on the practice. The supporting affidavit, (R. 4) filed six months after the Veterans Commissioner report, states it is the limitation of the payment of installments payable after death of a beneficiary to their commuted value calculated as of the date of death of the beneficiary rather than the full installments as they may have otherwise matured regardless of the date of any judgment or award of recovery of such insurance. The Veterans Commissioner report (R. 25) only states an administrative construction of Section 303 as amended. The appellate court does not refer to it. The petition for rehearing refers to the practice as stated in the accompanying letter (R. 42) of the Veterans Administrator; his statement of the practice is quoted in the petition (p. 6):

> "All cases which have been adjudicated in favor of estates of insureds under Section 303, World War Veterans' Act, have been settled upon the basis of the present value of installments as of the date of insured's estate became entitled to receive payment, except as hereinafter explained. Moreover, no judgment presented to the Veterans' Administration for payment has ever embodied any contrary interpretation."

The petition relegates his "hereafter explained" to a foot note summary to the effect that the exception is the result of Section 303 as amended, said to be obviously inapplicable to the instant case.

The petition also exhibits a supplementary letter from the Veterans Administrator that 58,963 cases have been adjudicated under Section 303 as amended since its enactment in 1925 and through the 1941 fiscal year. That this administrative practice of such important application has never been expressed officially, in an established regulation or ruling[11] is inferable from the industrious secondary effort made herein to give it existence. That very effort discloses its own futility.

From such effort, the indefiniteness and uncertainty of the administrative practice is evident. As stated in the supporting affidavit it must apply to Section 303 as amended, which the motion alleges contravenes the award of $10,580, the admitted recoverable present value at the end of the contract term. As derived from the exhibit letters from the Veterans Administrator, the practice is limited in the first letter to cases adjudicated under original Section 303 as only one class of cases is exceptionally adjudicated under Section 303 as amended; yet the second letter says expressly that 58,963 cases have adjudicated in 17 years under Section 303 as amended. The specific reference in the first letter to the great number of cases adjudicated in 17 years under the administrative practice allegedly based on orig-

[11] Sec. 426, Title 38, U. S. C. A.; c. 320, 5, 43 St. 608; authorizing rules and regulations.

inal Section 303, and at variance with the appellate decision, is thus modified by the second letter into their special adjudication under Section 303 as amended.[12]

The only definite special adjudication proffered out of the 58,963 cases, is the administrative *Cody* decision in which further installment payments due thereafter under an award to the estate of insured were commuted into present value as of the date of the last installment payment, pursuant to Section 303 amended, said specifically by the government (p. 13) to apply only to that case.

Yet in *Singleton* v. *Cheek*, after the deaths of insured in March, 1921, and of his beneficiary in March, 1923, awards were later made to each estate on August 18, 1925, and paid in lump sums; the administrator of the estate of insured was officially advised the award of commuted present lump sum value was pursuant to Section 303 as amended.[13] Again, in *Hatch* v. *United States*,[14] the Veteran Commissioner (R. 21) states upon termination in November, 1925, of installment payments under awards made in 1919 to persons in being, the Bureau ruled the commuted value of the remaining installments was payable to the estate of insured under Section 303 as amended. Either of these cases entirely refutes the contention here proposed that Section 303 as amended was intended only to liquidate the commutation of installments awarded in payment to the estate of an insured.

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[12] Further material error in the first Veteran Administrator letter is disclosed by the Objections to the Petition for Rehearing (R. 43).

[13] This advice appears in the case record but not in the opinion. *United States* v. *Towery*, 306 U. S. 324, 332, notes that the Administration holds a judgment requires, without further claim, the payment of further installments; if on or after the judicial determination of liability herein in December, 1939, administrative awards were made, it is submitted this case and the *Singleton* case would be identical. In *McCulloch* v. *Smith*, 293 U. S. 228, this Court holds Section 303 as amended expressly applicable to an administrative award to the estate of insured, where same and beneficiary awards were made n 1932 or thereafter on a contract effective in 1919 and unpaid to the one beneficiary who died in 1926, and the other who died in 1932.

[14] 29 F. (2) 213.

It follows the alleged prevailing practice has no substance, as prevailing or as legislatively sanctioned, and that previous contention about the practice could not arise since it appears first devised as an obstacle herein.

IV. The wider portents of the case.

Lastly, this case has a wider aspect. It is that Elizabeth Kerr, mother of insured, as the only surviving person within the permitted class, became entitled to the installments payable upon the death on June 24, 1924, of her husband, Eugene Kerr, the designated beneficiary. It was so provided in original Section 303 of the 1924 Act, and in section 15 of the 1919 Act, and Section 602 of the 1924 Act preserved any right vested under prior acts.[15] Her action, instituted in her individual capacity, was modified into claims of the estate of the beneficiary and of the estate of insured by reason of the *White* decision,[16] approved in subsequent decisions that Congress might create new contract conditions in a contract not entered into for gain, and whereby her vested beneficial right was annulled by Section 303 as amended.

Now in *Lynch* v. *United States*,[17] the insurance contracts, though not entered into for gain, are declared legal obligations that create vested rights and are of the same dignity and with the same legal incidents as other contracts of the United States. Admitting the contract is subject to all amendments of the original law, and for example to Section 303 as amended deemed by its provision retroactively in effect as of October 6, 1917, the date of the original law, its construction is submitted to be as follows. The veteran while living has an executory contract subject to change by legislation, except as to the amount of benefits, on the theory

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[15] *Hatch* v. *United States*, 29 F. (2) 213.

[16] 270 U. S. 175.

[17] 292 U. S. 571.

that he may by beneficiary designations obviate the changes, and that his failure to do so is his acceptance of the amendment. Upon his death, when the contract is executed, the resulting vested rights cannot be legislated away. If so, Mrs. Kerr, in her individual right was entitled to installments totalling $10,580 as she survived the contract term. Payment of the same amount as the admitted present value of the installments at the end of the contract term is but plain justice, although partial in view of her death, if her vested right, put aside by the *White* decision is restored by the *Lynch* decision. Pouring vested rights afterwards into the estate of the insured is not justified by administrative exigencies regarding their execution, and in this sense the case lights the way to new determinations upholding them.

CONCLUSION.

It is submitted the decision of the appellate court should be affirmed.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1941

No. 738

THE UNITED STATES OF AMERICA, *Petitioner*,

v.

ELIZABETH KERR, ADMINISTRATRIX OF THE ESTATE OF JOSEPH KELLY KERR, DECEASED.

PETITION OF RESPONDENT FOR REHEARING.

(Opinion, May 4, 1942)

CAMDEN R. MCATEE,
Attorney for Respondent.

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ELIZABETH KERR*, ADMINISTRATRIX OF THE ESTATE OF JOSEPH KELLY KERR, DECEASED.

PETITION OF RESPONDENT FOR REHEARING.

Rehearing is respectfully requested, on behalf of respondent, for purposes of a re-examination of the opinion, rendered herein on May 4, 1942, in regard to evident oversights concerning undisputed matters.

As it is of first importance to the Court and litigants, whether the opinion really straightens the way of decision in insurance cases under new Section 303, enacted into the World War Veterans Act in 1925, it becomes the duty of counsel to speak lest inadvertence in misconception of the case cause error to be clothed in the ermine of justice.

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*Citizens Loan & Trust Company, substituted, upon death of Mrs. Kerr, as Administrator.

THE CASE PRESENTED.

The contractual obligation of petitioner, arising on November 8, 1919, at the death of the insured, to pay the 240 monthly installments of $57.50 each to the surviving beneficiary, beginning in November, 1919, and ending in October, 1939, was always denied, with refusal of awards or payments in distribution, until judicially established herein after the end of the contract term.[1]

Section 303 of the World War Veterans Act, approved March 4, 1925, as retroactive to October 3, 1917, (referred to in the opinion as Section 303 as amended) entirely repealed and superseded original Section 303 of said Act, as a radical change of the prior law. As said in the opinion, it is the only present authority for making payment to the estate of the insured in discharge of the contractual obligation, as the result of the death of the surviving beneficiary in June, 1924, within the contract term; providing "*there shall be paid to the estate of the insured, the present value of the monthly installments thereafter payable; said value to be computed as of date of the last payment made under any existing award*".

Petitioner admits in the Petition for Certiorari (p. 4), the previous payment in distribution and satisfaction, of the judgment award for $3,220, entered by the trial court after the maturity of the contract in 1939 as the recovery of the estate of the beneficiary, preliminary to its award of $10,580 to the estate of insured.

The parties stipulate (R. 4) the amounts of $8,234, as of the death of the beneficiary in 1924, and of $10,580, as of the maturity of the contract obligation on October 8, 1939, and always thereafter, are the statutory lump sum present values, purged of interest, of the 184 installments representing the contractual obligation to the estate of insured; the distribution of one of these lump sums by award to the estate of insured as a compliance with new Section 303, is the only subject matter of the present case.

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[1] *Kerr v. United States*, 108 F. (2) 585, decided Dec. 4, 1939.

The stipulation and above admission are submitted to require that petitioner must also admit the propriety of award of said lump sum of $10,580, as of October 8, 1939, or as of said judgment awards thereafter. They satisfy the statutory phrase—"*as of the date of last payment made under any existing award*"—by establishing the "*last payment made under an existing award*", occurred after the maturity of the contract, when and always thereafter the lump sum payment is admittedly $10,580, for award as the distributive recovery by the estate of the insured.

Thus, the decision below is sustained by undisputed facts, which it is respectfully submitted are overlooked in the opinion.

In April, 1940, pursuant to new Section 303, the trial court entered judgment awards of $3,220 (R. 2) to the beneficiary estate, and of $10,580 to the estate of insured as their recoverable distributions, and subsequently reduced (R. 30) the $10,580 award to $8,234. When the Court of Appeals reversed on this point, and had denied rehearing (R. 46), the petitioner petitioned for, and certiorari was granted for its review.

As the basis for rehearing the case on a new issue, petitioner exhibited in the Court of Appeals (R. 41), a letter of July 14, 1941 from the Veterans Administrator to the Solicitor General, stating new Section 303 was asked for and enacted by Congress, with the sole intent of amending and removing a special inequity in the application of original Section 303 to a single class of cases, and that new Section 303 was administered in the ensuing 17 years, contrary to the ruling of the Court of Appeals. Respondent promptly objected (R. 42-6) that the Veterans Administrator had proposed new Section 303 to Congress to repeal original Section 303, and to obtain in new Section 303 new provisions of law to permit the immediate discharge of obligations and early closing of estates, and that the letter-statements being always known, were not sufficient grounds for a new trial.[2] The petition for rehearing was summarily overruled.

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[2] *Bankers Pocahontas Coal Co.*, 287 U. S. 308, 313.

It being admitted a last existing award, with final payment thereof in distribution to the beneficiary estate, was made after October 8, 1939, and that the agreed lump sum of $10,580 is the present commuted value necessary, by award administratively or judicially, to satisfy the contractual obligation to the estate of insured on or after October 8, 1939, it follows the award of $10,580, without interest, was properly made on April 4, 1940. The plain statutory provisions of new Section 303, being entirely applicable to the admitted facts, delay in their application is not material, as *it is neither apportionable, nor of influence upon the statutory application.*

THE OVERSIGHTS IN THE PRESENT OPINION.

The opinion properly dismisses as without weight in the case, the single question propounded to justify the grant of the Certiorari—*whether delay in its payment increases a government contractual obligation*—on the grounds that delay is not easily apportioned, and is without influence upon the statutory construction.

Paradoxically, the opinion holds the delay affects the amount of the contract obligation, by saying that Congress has neither empowered the Court to authorize payment of damages for delay in its payment, nor to award interest on past due insurance contract obligations, *overlooking*, and conflicting with its contrary conclusion, that Congress clearly intended the satisfaction of the obligation to be the payment "as of the date of last payment made under any existing award", of a lump sum representing the present value at that time of the remaining installments purged of interest; *overlooking* that the admitted payment, regardless of its date, on or after its entry on April 5, 1940, of the $3,220 judgment award is *"the last payment made under an existing award"*, and justifies, in fulfillment of this intent, the award of the present value of the remaining installments in the lump sum of $10,580, agreed as existing on and always after the previous maturity of the contract.

Abstractly, the first material *oversight* of the opinion is that it sees and considers the commuted present value of the payable contract installments as a principal sum enhanced by interest, instead of as a principal sum that the same rate of interest would enhance at the end of the contract term into the total of the installments. Specifically, the opinion thus *overlooks* the original obligation is to pay in a fixed term in fixed installments, both the $10,000 principal and its annual interest at 3½ per cent compounded annually, and that their commutation, correctly said in the opinion to rest solely upon Section 303;[3] as of the date of last payment made under any existing award, purges out the interest by determining the lump sum which at the same interest rate at the end of the contract term will equal the total payable installments. Specifically, the opinion thus *overlooks* that $10,580, being both the present and real value of the installments at the end of the contract term, and always thereafter, thus remains and is the statutory distribution for award to the estate of insured whenever the last payment made under any existing award is made subsequent to the end of the contract term.

Abstractly, the second material *oversight*, of the opinion, is that Section 303, enacted in 1925, is not considered to have repealed and entirely superseded, as a radical change in the prior law, the different provisions of original Section 303.[4] Specifically, the *oversight* is that new Section 303, be-

[3] The opinion further indicates the alternate provision for commutation rests upon the lack of power in Congress or in the Administration to reduce the contractual obligation (Cf: *Lynch* v. *United States*, 292 U. S. 571).

[4] (a) New Section 303, as enacted in 1925, is declared to effect such radical change in *Singleton* v. *Cheek*, 284 U. S. 493.

(b) That the Veterans Administration recommended new Section 303 in entire repeal and substitution for original Section 303, and Congress so enacted the new Section, contrary to the contentions of petitioner made and accepted in the opinion, is shown in Recommendation 13 (R. 17) and H. R. Rep. 1518 (R. 19), and *infra*, Note 10.

ing held amended only in one aspect applicable to a single class of cases, is held to contain and be ruled by a repealed provision of original Section 303.

These material oversights produce others in the opinion conclusions.

The opinion holds administrative allegations of a Congressional limited intent in enacting new Section 303, and of continuous administrative application of such intent, instead of its plain words, to its construction, justify and require its application to a single class of cases, exclusive of this case and other cases where administrative award was not made before 1924, *overlooking* that such limited intent, or such application of the new Section is contradicted by the record;[5] *overlooking* that judicial construction of a patently unambiguous phrase, is not obtainable from collateral circumstances,[6] unless its literal application will offend the moral sense as involving injustice, oppression or absurdity, or leading to an unreasonable result plainly at variance with the statute as a whole;[7] *overlooking* that such judicial construction is not obtainable from Committee reports or other aids to construction;[8] *overlooking* that the resulting opinion construction reads the phrase out of new Section 303, and, for its settlement of all but a very limited class of cases, reads into the section a phrase from the original but repealed Section 303, thus conflicting with the further opinion conclusion that Section 303 is the sole existing authority on and after March 4, 1925, for making payment of the contractual obligation to the estate of the insured.

The opinion holds the limited legislative intent and construction are established by statements in an inter-office communication from client to counsel; *overlooking* that such holding conflicts with all prior precedents, including *United*

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[5] Note 4b, *supra.*

[6] *Van Camp & Sons Co.* v. *American Can Co.*, 278 U. S. 245, 254.

[7] *Burnet* v. *Chicago Portrait Co.*, 285 U. S. 1, 16.

[8] Note (6), *supra.*

States v. *Jackson*, quoted and cited in the opinion,[9] and that non-existence of the intent and practice, tardily offered as a straw to stumble over, are conclusively established by the matters of record.[10]

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[9] The Jackson opinion precisely states its objective to be determination of: "* * * *'the purpose of language * * * not so plainly apparent as to preclude resort to judicial interpretation'* by use of *'familiar and approved sources,'* subject to the rules that great weight attach to consistent departmental constructions, and that they will not be overturned unless clearly wrong, or unless a different construction is required; it contains an analysis of numerous departmental decisions pertinent to the construable language.

"If the language be clear, it is conclusive. There can be no construction where there is nothing to construe—U. S. v. *Hartwell*, 6 Wall. 385, 386," quoted in *Helvering* v. *N. Y. Trust Co.*, 292 U. S. 455, 464."

For construction of ambiguous language, the precedents deny any weight to statements to committees or to floor discussions by persons not in charge of the legislation (*McCaughn* v. *Hershey Chocolate Co.*, 283 U. S. 488; *Duplex P. P. Co.* v. *Deering*, 254 U. S. 474), and limit consideration of circumstances to committee reports (*United States* v. *Madigan*, 300 U. S. 500, 504, a war risk insurance question), and to such uniform departmental construction as does not defect the obvious purpose of the words. (*Webster* v. *Luther*, 63 U. S. 331, *Iselin* v. *United States*, 270 U. S. 45.)

[10] The alleged limited intent of enactment and limited application of new Section 303 put forward as ground for rehearing in the inter-office letter of July, 1941, and given effect in the opinion is submitted previously entirely unknown (1) to Congress or the administration is recommending repeal of original Section 303, (vide note 4b, *supra*); (2) to the Bureau of War Risk Litigation when it had approved for payment the original $10,580 judicial award, for its Director wrote respondent counsel, June 28, 1940: *"The error in this respect was called to the attention of the Department by the Veterans Administration after the judgment had been transmitted with an authorization for its payment"*; (3) to respondent trial counsel writing the motion (R. 3) for amendment of the $10,580 judgment, as it first appears in his affidavit (R. 4) filed six months later (4) to petitioner in the Court of Appeals below where its brief only says: *"The amendment of March 4, 1925, was sponsored by the Veterans Bureau, and, shortly after its enactment, the Cody case was reconsidered under it,"* clearly establishing its alleged enactment to meet the Cody case is an afterthought; (5) to the Veteran Commissioner who advised the trial court December 31, 1940, " * * * *Section 303 as amended was intended to supersede all prior legislation * * * evidenced by history*

The opinion holds the Court of Appeals erroneously viewed the due and awardable distribution as $10,580—calculated as 184 x $57.50, representing a payment of interest as well as principal—contrary to Congressional intent that the value of the remaining installments, purged of interest, should be paid in a lump sum to the estate, *overlooking* the contrary and certain conclusion (R. 38) of the Court of Appeals:

> "At the time of judgment in this case, it is clear that the present value of the remaining installments was their true value."

and *overlooking* the Court of Appeals only directed the payment of $10,580, agreed by the parties to be said present value.

In rightfully declaring Section 303 is the only present authority for making payment to the estate, the opinion *overlooks* that it has no concern for original but repealed Section 303 or its constructions, and that, after repeal of original Section 303, its sole concern is the application of the new and substituted Section 303 as such present authority. It *overlooks* that new Section 303, retroactive to October 6, 1917, (R. 12), is complete, authorizing the commutation, with precise statement of the determinable true value, of the remaining installment obligation for its payment in a lump sum to the estate of insured, instead of in installments to persons in the permitted class, whenever there is no designated or surviving beneficiary, or the designated surviving beneficiary dies within the term, or the recipient dies or forfeits rights under any installment award in course of payment at the time of enactment of the section, excepting existing installment awards to estates of last

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*of said statute * * * the exceptions stated in the proviso thereto, and the final statement therein, that this section shall be deemed to be in effect as of October 6, 1917"*; (6) by its evident entire application to adjustment of cases involving awards subsequent to 1924 as recorded in opinions of this Court, and to all cases regardless of date of award, as hereafter fully shown.

surviving beneficiaries; *overlooking* that these provisions radically changed the prior provisions of original Section 303 (R. 16), which authorized commutation, without precise statement of the determinable true value, whenever no person in the permitted class survived either at the death of the insured or at the death of the designated beneficiaries within the term, which thus precipitated existing installment awards into a forthwith commutation, from which new Section 303 specifically preserves them.[11]

It *overlooks* the radical change in the prior law, made by the new and substituted Section 303, as retroactive to October 6, 1917, was so intended by the Veterans Administration, so accepted by Congress, so represented and understood by the trial court, and so recognized previously in this Court.[12]

It *overlooks* the alleged exception, that the phrase is to be held inapplicable in case of delay, entirely falls away since delay is without influence in construction of the phrase.

It *overlooks* that action brought upon the claim after disagreement removes the controversy out of administration, and entirely into judicial determination of the right and recovery prescribed by new Section 303.[13]

By its statement that new Section 303 does not apply to awards made before 1924, the opinion *overlooks* that the statutory phrase: *"Said value shall be computed as of the date of last payment made under any existing award,"*

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[11] (a) Thus, the necessary commutation of the *Cody* installment award under original Section 303 became unnecessary under new Section 303 as excepted by its proviso.

(b) The wider intent and effect of new Section 303 in comparison with original Section 303 is stated in *Hatch* v. *United States*, as quoted (R. 20) by the Veteran Commissioner to the trial court.

[12] Notes 4 and 10, *supra*.

[13] *United States* v. *Pfitsch*, 256 U. S. 547, 552.
Crouch v. *United States*, 266 U. S. 180, 182.
United States v. *Missouri P. R. Co.*, 278 U. S. 269.
Fox v. *Standard Oil Co.*, 294 U. S. 87.
Sanford's Estate v. *Commissioner*, 308 U. S. 51.
United States v. *Ellison*, 74 F. (2) 864, 868, (C. C. A.-4) Cert. denied, 295 U. S. 750.
Hines v. *United States*, 70 App. D. C. 206, 209, 105 F. (2) 87.

became, has been and is literally applicable, administratively or judicially, in every case, regardless of when the original installment or other award was made, for commutation of the remaining installments into lump sum present value.

Consider that such application was evidently required after its enactment in March, 1925, where, this Court has found[14] administrative awards were first made in August, 1925, in full and final distribution, respectively, to the estate of the beneficiary, who died in 1923 after surviving the death in 1921 of insured, and, in a lump sum, to the estate of insured; and, where this Court has found[15] administrative awards were first made in 1932 in full and final distribution, respectively, to the estates of the beneficiaries, who died in 1926 and 1932, after surviving the death in 1919 of the insured, and, in a lump sum, to the estate of the insured, and the case-record reveals that the Administration wrote to the Administrator of the insured that such commutation was required by and made under new Section 303.

Consider that such application is evidently also required in the cases of any determined installment award, whether

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[14] *Singleton* v. *Cheek*, 284 U. S. 493.

In avoidance of the implicit application of new Section 303 to this and the subsequent illustrations, petitioner brief below told the Court of Appeals:

> "* * * the statute has been construed administratively to mean that an award to a beneficiary is not to be regarded as 'existing' after the death of the beneficiary. Thus, in the present case, the award to the estate of the beneficiary would, under the administrative construction of the statute, be regarded as 'existing' only during the lifetime of the beneficiary. * * * The effectiveness of this judgment upon the rights of the parties is restricted to the 56 months during which the beneficiary survived the insured."

In the same spirit of avoidance, petitioner has assured this Court differently, that the statute was always intended and therefore only construed as applicable only to a special class of cases.

[15] *McCulloch* v. *Smith*, 293 U. S. 228.

previously made and in course of payment at the enactment of new Section 303, or thereafter made.[16]

Consider that such application is evidently required herein, where awards, whether administrative or judicial, were to be made, as in the cases cited above, on a date subsequent to the death of the surviving beneficiary and also subsequent to the maturity date of the contract, in full and final distribution, respectively, to the estate of the beneficiary, who survived insured and died in 1924, and, in a lump sum, to the estate of the insured. It is certain the true present value of the remaining installments at the maturity of the contract would be payable, as it would be if the final awards in any of the foregoing cases were made on or after the last day of the contract term.

CONCLUSION.

For respondent, for cause thus shown, it is respectfully submitted the judgment below should be affirmed by modification of the present opinion, by which it is now subject to reversal.

Respectfully,

CAMDEN R. MCATEE,
Attorney for Respondent.

CERTIFICATE OF COUNSEL.

Camden R. McAtee, attorney for respondent, hereby certifies the foregoing Petition for Rehearing is presented in good faith, and not for delay.

CAMDEN R. MCATEE.

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[16] *Pagel* v. *Pagel*, 291 U. S. 473, where the opinion finds insured died in October, 1925, the surviving beneficiary received an installment award until he died in 1928, and lump sum award then was made to the estate of insured.

These illustrations (14, 15, 16) are of the evident application of new Section 303 to awards made subsequent to 1924 to which the opinion holds it is inapplicable. In *Hatch* v. *United States*, 29 F. (2) 213 (R. 20) its application is equally evident in case of award previously made, where in November, 1925, payments under awards made in 1919 were suspended and in 1926 commutation of the remaining installments under new Section 303 was precisely ordered.

SUPREME COURT OF THE UNITED STATES.

No. 738.—October Term, 1941.

United States of America, Petitioner, *vs.* Citizens Loan & Trust Company, Administrator de bonis non of the Estate of Joseph Kelly Kerr, deceased.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

[May 4, 1942.]

Mr. Justice Byrnes delivered the opinion of the Court.

Joseph Kelly Kerr, while in the United States Army during the last war took out a yearly renewable term insurance policy in the amount of $10,000, naming as beneficiary his father, Eugene Kerr. The insured died November 8, 1919. On March 6, 1920, the War Risk Bureau denied any liability under the contract. Eugene Kerr, the designated beneficiary, died June 24, 1924. This suit was filed November 6, 1925.

In the District Court judgment was rendered denying any recovery on the policy. The Court of Appeals for the District of Columbia, on December 4, 1939, reversed the judgment of the District Court. 108 F. 2d 585. The District Court on April 5, 1940, entered judgment for $3220.00 in favor of the estate of Eugene Kerr, the beneficiary under the policy, and a judgment for $10,580.00 in favor of the estate of the insured, Joseph Kelly Kerr. Upon rehearing the District Court by its order of January 9, 1941, reduced the latter judgment to $8,227.50. On appeal the Court of Appeals again reversed the District Court and ordered the payment of $10,580.00. 122 F. 2d 638. We granted certiorari. — U. S. —.

The insurance contract provided for the payment of 240 monthly installments of $57.50 each. It is not disputed that Eugene Kerr, as beneficiary, was entitled to receive the 56 monthly installments that accrued during his lifetime.[1] They aggregated

[1] *I. e.* from Nov. 8, 1919, the date of the death of the insured, through June 8, 1924, the last due date for a monthly installment prior to the beneficiary's death.

$3220.00. The portion of the District Court's judgment which awarded that sum to Eugene Kerr's estate is not in controversy.

The issue here involves only the amount due the estate of Joseph Kelly Kerr, the insured, on the 184 installments remaining after the death of the beneficiary. The government contends that the amount due the estate is $8234, which represents the present value of the 184 installments computed as of the death of the beneficiary on June 24, 1924. Respondent argues that the amount due is $10,580, which is the aggregate of 184 installments of $57.50 each.[2]

Prior to 1924 the statutes of the United States directed that when the estate of an insured became eligible to proceeds under the contract,[3] they should be paid in regular monthly installments. The most recent enactment prior to that year was the Act of August 9, 1921, which provided:

"If no person within the permitted class of beneficiaries survive the insured, then there shall be paid to the estate of the insured the monthly installments payable and applicable under the provisions of Article IV of the War Risk Insurance Act [Act of October 6, 1917, c. 105, 40 Stat. 398, 409] . . . ."[4]

The World War Veterans Act of 1924[5] superseded the War Risk Insurance Act of 1917 and its amendments. It provided, in § 303:

"If no person within the permitted class of beneficiaries survive the insured, or if before the completion of payments the beneficiary or beneficiaries shall die and there be no surviving person within said permitted class then there shall be paid to the estate of the insured, the present value of the monthly installments thereafter payable under the provisions of this title . . . ."

This section altered the method of payment only with respect to benefits payable to the estates of insured. It did not change the method of payment to beneficiaries. Its obvious purpose was to have the obligation to the estate paid in one lump sum rather than in

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[2] It is agreed that however this issue is resolved, respondent's recovery is subject to a deduction of $6.50, the amount of a premium due on the policy for November 1919, the month during which the insured died.

[3] The claim to the proceeds might fall to the estate in several ways, such as by the death of the named beneficiary or by the death of an insured who has designated no beneficiary. Since the respondent in this case became entitled as of the death of Eugene Kerr, the beneficiary, the latter will be spoken of as the critical event in our discussion.

[4] § 407, 42 Stat. 148.

[5] C. 321, 43 Stat. 607.

monthly installments. Since these installments included interest as well as principal, Congress desired to eliminate the interest when it provided for the lump sum payment. Accordingly it declared that the lump sum should be equal to "the present value of the monthly installments thereafter payable". The word "thereafter" plainly relates to the death of the beneficiary, in a case like the one before us. And this has been the interpretation placed upon the section by the Veterans Administration ever since, the requirement being that the present value is to be computed as of the date of the death of the beneficiary.

In 1925 § 303 was amended in several respects.[6] The only one of these which is important here is the addition of the following words: "said value to be computed as of the date of last payment made under any existing award." And this is important only because of the confusion which it has generated in the disposition of this case. According to a letter addressed to the Solicitor General by the Administrator of the Veterans Administration on July 14, 1941 (R. 41), the language quoted was added to § 303 to correct a specific inequity which had arisen in a number of cases following the 1924 Act but which is not encountered here. That inequity arose in this way: In several cases the estate of the insured had become entitled to the proceeds of the policy prior to 1924 and a number of the $57.50 monthly installments had already been paid to the estate of the insured at the time Congress enacted § 303 with its provision for a lump sum payment to the estate. Since § 303 was made retroactive to October 6, 1917, the amount due the estate in these cases, as in the others, was held to be the present value of the installments remaining due after the death of the beneficiary, computed as of the date of death of the beneficiary. But in these cases, unlike the others, that portion of the installments already paid to the estate which represented interest had to be deducted from the lump sum award. To avoid this partial withdrawal of funds which had actually been released in these particular cases Congress provided in the 1925 amendment that the "present value of the monthly installments thereafter payable" should be computed "as of date of last payment made under any existing award." Under this formula the installments which had been paid to the estate of an insured prior

[6] 43 Stat. 1310.

to 1924 were not disturbed. The Veterans Administration has consistently treated the 1925 amendment as applicable only to this limited number of cases. In the others, it has invariably computed the "present value" as of the date of death of the beneficiary. This administrative interpretation over a period of 17 years controlling the settlement of thousands of cases is entitled to great weight, "and such construction is not to be overturned unless clearly wrong or unless a different construction is plainly required." *United States* v. *Jackson*, 280 U. S. 183, 193.

In this case no award had been made prior to 1924 and hence the amount due to the insured's estate could not be computed "as of date of last payment made under any existing award." This language of the 1925 amendment therefore cannot be applied to the facts here. But it does not follow that the balance of § 303 does not apply. Indeed, § 303 is the only present authority for the making of any payments to the estate of the insured.[7] Disregarding the words added by the 1925 amendment, the section simply requires the payment to the estate of a lump sum equal to "the present value of the monthly installments thereafter payable." And the latter language, as we have said, has been consistently interpreted to mean "present value" as of the date of death of the beneficiary.

The Court of Appeals was of the opinion that because recognition of the claim had been delayed until after the passage of the 240 months, the principles of computation embodied in the 1924 Act and the 1925 amendment required a settlement as if there had been an award of monthly installments. That is, it took the view that the 184 monthly installments concededly due to the estate should be multiplied by $57.50, which represents a payment of interest as well as principal, and the resulting total of $10,586 awarded to respondent. But one of the purposes of the 1924 and 1925 enactments was to abolish the monthly installment method of settling the claims of veterans' estates. Congress could not have made clearer its intention that the value of the remaining installments, purged of interest, should be paid in a lump sum to the estate. Both the Veterans Administration and this Court have recognized a legislative policy against the allowance of in-

[7] The insurance contract is expressly made subject to the War Risk Insurance Act of 1917, and all amendments thereto. See White v. United States, 270 U. S. 175, 180.

terest on past due payments on these policies. *United States* v. *Worley*, 281 U. S. 339. The error which undermines respondent's contention and the decision of the Court of Appeals is the failure to give full effect to this Congressional purpose to eliminate interest from the lump sum settlement.

The Court of Appeals was evidently impressed by the delay in the settlement of respondent's claim. We share that concern. The insured died almost 23 years ago and final disposition of the case is only now in view. But responsiiblity for the delay is not easily apportioned.[8] And in any event it could not influence our construction of the language of the statute. Congress has authorized neither the payment of damages for the delay nor an award of interest on past due obligations incurred under these insurance certificates, and it is not within our power to do so.

The case is remanded for reinstatement of the judgment of the District Court.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

[8] Although the Veterans Bureau denied recovery on the policy in 1920, it was not until 1925 that this suit was instituted.